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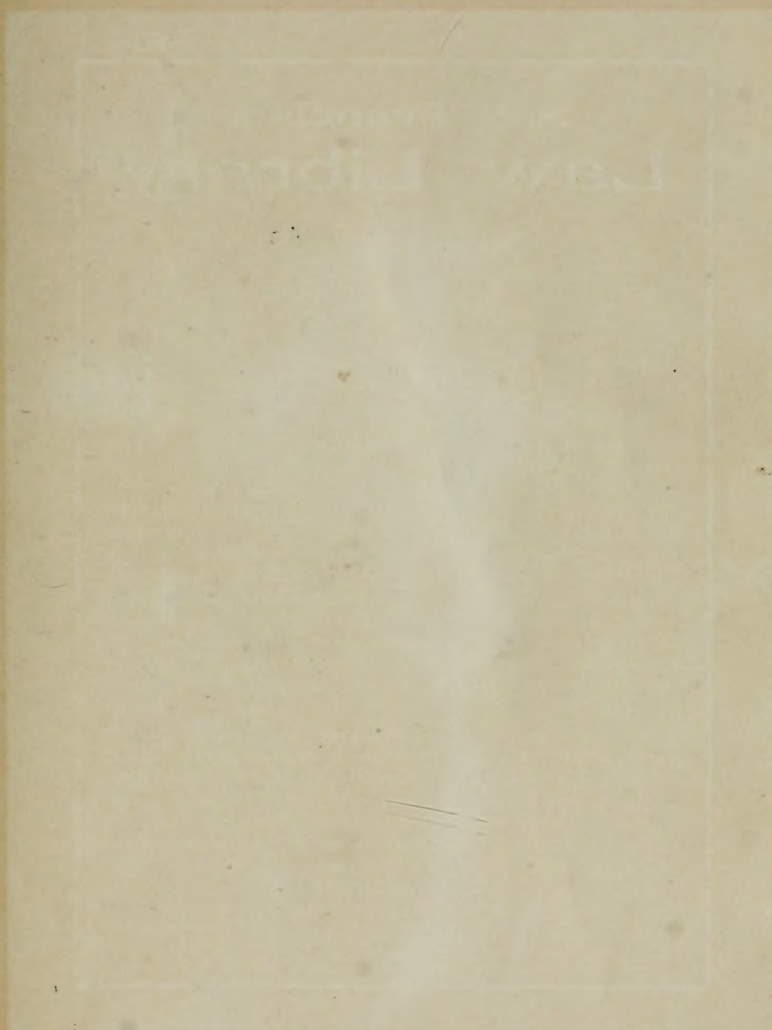
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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

U. S. OIL & LAND COMPANY, A Corporation,
Appellant.

vs.

Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased; George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell; John Llewellyn Auzerai and P. J. Crosby, W. P. Hammon and F. C. Van Deinse, Associated Oil Company, Union Oil Company, and Catherine M. Bell, also known as Kate M. Bell,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the United States District
Court, Southern District of California,
Southern Division

Filed

AUG - 5 1914

F. D. Monckton,

Clerk

Records of the S. Circuit
Court of appeals
276

UNITED STATES CIRCUIT COURT OF AP-
PEALS, FOR THE NINTH CIRCUIT.

U. S. OIL & LAND COMPANY, a corporation, Ap-
pellant,

vs.

Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed; Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell; Teresa Bell; T. M. Bell; Elizabeth M. Bell; Muriel Bell, also known as Muriel Margaret Bell; Robina Bell; Catherine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer; Josephine M. Holbrook; John Lewellyn Auzerai; Daniel A. McColgan; Peter J. Crosby; Robina Vellguth; George Henry Howard; O. H. Harshbarger; Alexander D. Keyes; Thomas E. Palmer; Florence Adele Gibson; C. H. Williams; Charles H. Pearson; Peter Guidotti; George Guidotti; Guidotti Bros.; Baptiste Ferrini; Henry N. Evans; J. S. Evans; J. Doherty; Joseph Smith; Jose Pico; John Doherty; Dario de la Guerra; William Gewe; John S. Bell; R. McColgan; Reginald McColgan; Clarence Vellguth; W. P. Hammon; F. C. Van Deinse; C. A. Hunt; George Henry Howard as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; The Associated Transportation Company, a corporation; Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe; James Doe; John Roe; James Roe; Jane Doe; Jane Roe; Mary Doe; Mary Roe; Richard Roe; Henry Roe, and Kate Roe,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United
States of America, in and for the Southern
District of California, Southern Division.

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NAMES AND ADDRESSES OF SOLICITORS AND COUNSEL.

For Appellant, U. S. Oil & Land Company, a corporation: Richards & Carrier, Fithian Building, Santa Barbara, California; James L. Crittenden, Barclay Henley and Jacob M. Blake, 667 Mills Building, San Francisco, California.

For Appellees, Teresa Bell, etc., et al.: T. Z. Blake-man, 420 Phelan Building, San Francisco, California.

For Appellees, Thomas Frederick Bell et al.: Peter J. Crosby, Room 9, 1007 Broadway, Oakland, California.

For Appellees, W. P. Hammon and F. C. van Deinse: Chauncey S. Goodrich, and Charles W. Slack, Alaska Commercial Building, San Francisco, California.

For Appellee, Associated Oil Company: Edmund Tauszky, Wells Fargo Building, San Francisco, California.

For Appellee, Union Oil Company of California: Lewis W. Andrews, and Thos. O. Toland, Union Oil Building, Los Angeles, California.

For Appellee, A. S. Holman: A. E. Bolton, Monadnock Building, San Francisco, California.

For Appellee, Catherine M. Bell: Sullivan, Sullivan & Theo. J. Roche, San Francisco, California.

United States of America, ss:

The President of the United States,

To Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell and to your Solicitor, T. Z. Blake-man:

To Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais and P. J. Crosby, and to Peter J. Crosby, your solicitor:

To W. P. Hammon and F. C. van Deinse and to Chauncey S. Goodrich, your solicitor:

To Associated Oil Company and Edmund Tauszky, your solicitor:

To Union Oil Company and to Lewis W. Andrews and Thomas O. Toland, your solicitors:

To Catherine M. Bell, also known as Kate M. Bell, and to Sullivan and Sullivan and Theo. J. Roche, your solicitors.

Greeting: You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern District of California, Southern Division, wherein U. S. Oil & Land Company is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that

behalf.

Witness, the Honorable Erskine M. Ross, United States Circuit Judge for the Ninth Circuit, this 14th day of January, A. D. 1914.

Erskine M. Ross,
United States Circuit Judge.

United States of America, ss:

On this 16th day of January in the year of our Lord one thousand nine hundred and fourteen, personally appeared before me Paul P. O'Brien, Deputy Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the subscriber, Jacob M. Blake and makes oath that he delivered a true copy of the within Citation to James O. Toland, one of the solicitors for the defendant, Union Oil Company, at Los Angeles, California, on the fourteenth day of January, 1914; and to T. Z. Blakeman, solicitor for the defendants; Teresa Bell, as administratrix of the estate of Thomas Bell, deceased; George Henry Howard, O. H. Harshberger, George Henry Howard, as the executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell; and to Peter J. Crosby, solicitor for the defendants, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerai, Peter J. Crosby; and to Chauncy S. Goodrich, one of the solicitors for the defendants, W. P. Hammon and F. C. van Deinse; and to Edmund Tauszky, solicitor for the defendant, Associated Oil Company; and to Theo. J. Roche, one of the solicitors for the defendant, Catherine M. Bell, also known as Kate M. Bell, and to each of them, at San Francisco, California, on the fifteenth day of January, 1914.

Subscribed and sworn to before me at San Francisco, California, this 16th day of January, A. D. 1914.

Jacob M. Blake.

Paul P. O'Brien,

Deputy Clerk U. S. Circuit Court of Appeals for
the Ninth Circuit. (Seal)

Due service of the within citation by receipt of a
copy is hereby admitted at California this 14th day of
January, 1914.

Lewis W. Andrews.

Thos. O. Toland,

Solicitor for defendant Union Oil Company.

Sullivan & Sullivan and Theo. J. Roche,

Solicitors for defendant Catherine M. Bell, etc.

Service of the within citation by receipt of a copy is
hereby admitted this 15th day of January, 1914.

Charles W. Slack,

Chauncey S. Goodrich,

Solicitors for W. P. Hammon and F. C. Van Deinse.

Edmund Tauszky,

Solicitor for Associated Oil Co.

(Endorsed) No. 140 Civil. In Equity. In the Dis-
trict Court of the United States in and for the Southern
District of California, Southern Division. U. S. Oil &
Land Company, Complainant, vs. Teresa Bell, as ad-
ministratrix etc., et al., Defendants. Citation on Appeal.
Filed Jan. 17, 1914. Wm. M. Van Dyke, Clerk. By
Chas. N. Williams, Deputy Clerk.

In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.

No. 140 Civil. In Equity.

U. S. Oil & Land Company, a corporation, Complainant,
vs.

Teresa Bell as administratrix of the estate of Thomas
Bell, deceased, with the will annexed; Thomas Fred-
erick Bell; Bessie M. Bell, wife of Thomas Frederick
Bell, also known as Elizabeth M. Bell; W. E. Bell,
also known as Eustace Bell; Reginald Bell, Teresa
Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also
known as Muriel Margaret Bell; Robina Bell, Cath-

erine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer; Josephine M. Holbrook, John Lewellyn Auzerai, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. van Deinse, C. A. Hunt, George Henry Howard, as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; The Associated Transportation Company, a corporation; Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe, and Kate Roe, Defendants.

In the District Court of the United States for the Southern District of California, in and for the Southern Division.

U. S. Oil & Land Company, a corporation, Complainant,

vs.

Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, with the will annexed; Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, Teresa Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also known as Muriel

Margaret Bell; Robina Bell, Catherine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auzerais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. Van Deinse, C. A. Hunt, George Henry Howard, as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; and Associated Transportation Company, a corporation; and Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, Defendants.

BILL IN EQUITY.

To the Honorable, the Judges of the District Court of the United States in and for the Southern District of California:

1—The U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation existing by and under the laws of the State of Arizona and a citizen of said State of Arizona, brings this, its Bill, against the defendants above-named and against each of said defendants, and for cause of action and complaint against said defendants and against each of said defendants your orator, said U. S. Oil & Land Company, complains, avers and says:

1st—That, as your orator is informed, advised and believes, the Territory of Arizona under and by the laws of which your orator, said U. S. Oil & Land Company, was formed, organized and existed as a corporation, has been admitted and become a State and one of the United States of America, and is now a State and one of the United States of America; that it was and is provided and declared in and by the Constitution of said State of Arizona that all laws of the Territory of Arizona in force at the time of the adoption of said Constitution should remain in force as laws of the State of Arizona until they expired by their own limitations or were altered or repealed by law, and also that no rights or contracts existing at the time of admission of said State of Arizona into the Union should be affected by a change in the form of government from territorial to state; that by and under the provisions of said Constitution your orator became and is a corporation existing under the Constitution and laws of the State of Arizona;

That the complainant is the owner in fee simple absolute of an undivided one-half of all that certain tract, piece and parcel of land situate, lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, bounded and described as follows, to-wit:

Commencing at a post in a deep ravine on the southern boundary line of the Rancho de Los Alamos, being station number two (2) of County Survey number three hundred and fifty-seven (357), made May 31st, A. D. 1867, for James B. Shaw, from which station number one (1) of the official survey on the southeast corner of said rancho bears south seventy-seven and one-fourth degrees east ($77\frac{1}{4}^{\circ}$ E.) eighty-five chains and seventy-two links distant; thence running north seventy-seven and one-fourth degrees west along the southern boundary line of said rancho one hundred and seventy-nine chains to a post on the south slope of a high mountain range, being station number two of County Survey number three hundred and fifty-eight, made for Thomas Bell; thence running north three and one-half degrees

east two hundred and twenty chains and eighty-four links to station number three of said County Survey; thence running north five and three-fourths degrees east three hundred and eighty-five chains and nine links to the northern boundary line of said rancho at a point sixteen chains and ninety-seven links west of a post marked A. No. 6; thence running east along the said northern boundary line of said rancho sixteen chains and ninety-seven links to said post marked A. No. 6 of the official survey of said rancho; thence running south forty chains along the line of said official survey of said rancho; thence running east forty chains along the northern line of said official survey; thence running south fifty-nine and one-fourth degrees east and along the said northern line of said official survey one hundred and twenty-nine chains and six links to station number four of County Survey number three hundred and fifty-seven; thence running south five and three-fourth degrees west along the western line of said County Survey number three hundred and fifty-seven, three hundred and eighteen chains and twenty-eight links to station number three of said survey; thence running south three and one-half degrees west and along the line of said survey two hundred and twenty chains and eighty-four links to the place of beginning; containing ten thousand and sixty-seven and two-tenths acres of land, and being a part of the Rancho de Los Alamos, and being the ten thousand and sixty-seven and two-tenths acres of land conveyed by Thomas Bell to John Stewart Bell by deed dated October 19th, A. D. 1874, and recorded October 27th, A. D. 1874, in the office of the County Recorder of the County of Santa Barbara, State of California, to which deed and conveyance reference as to the description of said land is hereby made; excepting and reserving from the lands above described all the town lots in the town of Los Alamos sold and conveyed by deed by John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos, situated in the County of Santa Barbara, surveyed for J. B. Shaw

and John S. Bell September 15th, 1876. W. W. Bagster, Surveyor," and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1879, in Book "B" of Miscellaneous Records, page 406, and thereon numbered as follows: Lots four (4), six (6), seven (7), eight (8), nine (9), eleven (11), fourteen (14) to twenty-two (22), both inclusive, and twenty-five (25) in Block four (4); Lots eight (8), nine (9), fourteen (14), fifteen (15), sixteen (16), nineteen (19) and twenty (20) in Block five (5); Lots five (5) and six (6) in Block six (6); Lots one (1) to thirteen (13), both inclusive, Lot sixteen (16) and lots eighteen (18) to twenty-six (26), both inclusive, in Block eight (8); all of Block nine (9), except Lots twenty-one (21) and twenty-two (22); all of Block sixteen (16), excepting Lots twelve (12), thirteen (13), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26); all of Block seventeen (17), except Lots one (1), two (2), three (3), four (4), five (5), six (6), nineteen (19), twenty (20) and twenty-one (21); Lots twenty (20), twenty-one (21) and twenty-two (22) in Block eighteen (18); Lots one (1) to nine (9), both inclusive, in Block twenty (20); Lots six (6) to nineteen (19), both inclusive, in Block twenty-one (21); also excepting all the land conveyed or donated prior to June 7th, 1887, by said John S. Bell for county roads, streets and railroads, and the rights of the purchasers of lots in said town of Los Alamos to the use of the streets and highways therein; also the cemetery plot adjoining said town conveyed by said John S. Bell by deed of June 17th, 1885; also excepting therefrom the following described lots, pieces and parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosner since August 23rd, 1887, to-wit: Lots twenty-three, twenty-four and twenty-six in Block four; Lot five in Block four; Lots one, two, three and four in Block twenty-one; Lot twenty-one in Block nine; Lots three and thirteen in Block four; Lots three, four, six, seventeen, eighteen, twenty-one and twenty-two in Block five; Lots nineteen, twenty and

twenty-one in Block seventeen—all of the town of Los Alamos; Tract number twenty-eight (28), containing four and one-fourth acres; Tracts numbers fifty-one (51), fifty-two (52) and fifty-three (53), containing fifteen acres, and Tract number twenty-three (23), containing four and 31-100 (4.31) acres of land, of Grover, Rosner and Irwin's Subdivisions of the Los Alamos Rancho;

2d—That said defendant San Francisco Savings Union is and during all the times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the city and county of San Francisco, in said State of California;

3d—That said defendant Mercantile Trust Company of San Francisco is and during all the times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, in said State of California;

That on the 16th day of October, 1892, said Thomas Bell died testate in the City and County of San Francisco, State of California, a resident of said city and county, leaving property therein, both real and personal; that the last will and testament of said Thomas Bell was by an order of the Superior Court of the City and County of San Francisco, State of California, duly made and given on the 7th day of November, 1892, admitted to probate; that on the 7th day of November, 1892, by an order of Court duly given and duly made, George Staacke and John W. C. Maxwell and one Henry Pichoir, the executors named in said will, were duly appointed the executors of the last will and testament of said Thomas Bell, deceased, and each of them on the 7th day of November, 1892, duly qualified and entered on the discharge of their duties as such executors; that thereafter, on the 30th day of December, 1892, said Henry Pichoir renounced his trust as such executor, and his resignation as such executor was on that day duly

accepted by the Court and he was discharged from his duties as such executor; that thereafter and on the 13th day of September, 1898, the resignation of John W. C. Maxwell, as such executor, was by order of said Court in the matter of said estate accepted and said Maxwell ceased to be executor of said estate; that thereafter and on the 4th day of May, 1900, an order was duly made and entered in said Superior Court in the matter of said estate of Thomas Bell, deceased, revoking the letters testamentary that had been issued to said Gorge Staacke, and said George Staacke ceased to be executor of the estate of said Thomas Bell, deceased; that thereafter and on the 2d day of February, 1902, said Teresa Bell filed a petition in the matter of the estate of Thomas Bell, deceased, praying that letters of administration of the estate of Thomas Bell, deceased, with the will annexed, be granted and issued to her, and that such proceedings were had and taken in the matter of said estate that an order was duly made therein by said Superior Court of the City and County of San Francisco on the 13th day of February, 1902, appointing said Teresa Bell administratrix of the estate of Thomas Bell, deceased, with the will annexed, and said order was duly filed and entered on the 19th day of February, 1902, and letters of administration of the estate of Thomas Bell, deceased, with the will annexed, were duly issued to said Teresa Bell; that said Teresa Bell on said 19th day of February, 1902, duly qualified as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and has ever since been and now is the administratrix of the estate of Thomas Bell, deceased, with the will annexed;

4th—That the defendant Rauer's Law and Collection Company is and during all the times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California;

5th—That the defendants above and in this complaint named and mentioned claim and assert, and each of them claims and asserts an estate or interest in said

above described tract, piece and parcel of land and in every part thereof adverse to the complainant; that said claims are and each of said claims made by each of said defendants is wrongful and unlawful and without any right whatever, and that said defendants have not and each of said defendants has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece and parcel of land of which plaintiff is owner, or in or to any part or portion thereof.

6th—That, as your orator is informed and believes, the true name of said Robina Bell is Robina Vellguth; the true name of said R. McColgan is Reginald McColgan, and the true name of said Rauer Law and Collection Company is Rauer's Law and Collection Company; that the plaintiff has designated said defendants by both names, as it has no personal knowledge as to their true or full names.

7th—Your orator further complaining, shows, avers and alleges upon information and belief that on the 29th day of June, 1901, a judgment and decree was duly made and rendered in and by the said Superior Court of Santa Barbara County and Hon. W. S. Day, Judge thereof, and was duly filed therein on said 29th day of June, 1901, in said Superior Court by C. A. Hunt, County Clerk of said County of Santa Barbara and Clerk of said Superior Court, in an action then pending in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," and in which action Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, at her request as such administratrix had been substituted by order of said Superior Court made in said action as defendant in place of defendants George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased; that the said judgment and decree so rendered, made and filed on the 29th day of June, 1901, was thereafter duly entered on the 9th day of July, 1901, by the Clerk of said Superior Court in the records and Judgment Book of said Superior

Court; that said judgment and decree was entitled in said action and cause and was in the words and figures following, to-wit:

"The above-entitled action having come on in its regular order on the calendar for trial on the twenty-second day of June, 1900, upon the pleadings hereinafter mentioned before the above entitled Court sitting without a jury, the Hon. W. S. Day, Judge of said Court, presiding; and the trial of said action having thereupon and thereafter proceeded with on the 22d, 23d, 25th, 26th, 27th, 28th, 29th and 30th day of June, 1900, and on the 2d day of July, 1900, and submitted to the Court for decision, Richards & Carrier, Esqs., and James L. Crittenden, Esq., appearing as attorneys for the plaintiff on said trial, and Canfield & Starbuck, Esqs., appearing on said trial as attorneys for defendant George Staacke and for Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and T. Z. Blakeman also appearing on said trial as attorney for said defendant Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and oral and documentary evidence having been introduced on said trial by the parties, respectively, and said attorneys having thereafter duly served and presented and submitted to the Court their briefs for and on behalf of the parties to said action, respectively, and said action having been duly submitted to the Court for decision, and the Court having heard and duly and fully considered all the evidence and the briefs and arguments of said attorneys and counsel, and having thereafter and on the 6th day of March, 1901, duly made, rendered and filed its decision consisting of findings of fact and conclusions of law, and the Court having thereafter and on the 7th day of June, 1901, amended its decision; and said action having been tried and said trial had upon the following pleadings and amendments of the pleadings of the several parties to said action, to-wit:

The amended and supplemental complaint, filed June 9th, 1897, the answer to the plaintiff's amended and supplemental complaint, filed June 10th, 1897, the

amendment to plaintiff's amended and supplemental complaint, filed June 12th, 1897, the amendment to plaintiff's amended and supplemental complaint, filed August 11th, 1898, the stipulation annexed to said last named pleading and filed therewith August 11th, 1898, the amended cross-complaint of defendants, filed April 21st, 1896, amended answer to amended cross-complaint, filed June 11th, 1897, amendment to amended answer to amended cross-complaint, filed August 11th, 1897.

Now, therefore, it appearing to the Court that the complaint and summons in said action were duly and personally served upon defendants George Staacke, George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, and that thereafter each of said defendants duly appeared and filed an answer in said action; and that on the 9th day of June, 1900, upon proceedings had and taken and upon the order of this Court and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, was made and substituted a defendant in said action in the place of George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and that on the 7th day of January, 1901, upon a motion duly made by and on behalf of Katherine M. Bell and James L. Crittenden, and upon it appearing to the Court that since the commencement of this action the original plaintiff, John S. Bell, had deed and conveyed and parted with said land mentioned and described in said paragraph 11 of said amended and supplemental complaint, and all his right, title and interest therein, and that said Katherine M. Bell and James L. Crittenden had succeeded to all the right, title and interest of John S. Bell in and to said lands described in said paragraph 11, and to all the rights of action of said John S. Bell, the said Katherine M. Bell to an undivided one-half thereof, and the said James L. Crittenden to an undivided one-half thereof, the Court by its order, duly made, ordered that said action be continued in the name of the original plaintiff.

And it further appearing to the Court that each

and all of the proceedings hereinabove in this decree mentioned were duly had and that the said Katherine M. Bell and James L. Crittenden as successors in interest to John S. Bell are entitled to the relief prayed for in said amended and supplemental complaint, and to the relief hereinafter granted, it is ordered, adjudged and decreed as follows, to-wit:

First: That George Staacke, one of the defendants in this action, make, sign and acknowledge, execute and deliver a good and sufficient deed and conveyance to Katherine M. Bell and James L. Crittenden each of an undivided one-half of the following described lands, to-wit: All that real property situate in the County of Santa Barbara, State of California, forming a part of the rancho known as "Rancho de Los Alamos," to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Secondly: That said George Staacke did not become by or by reason of the execution and delivery of the deed and conveyance made to him by Dwight W. Grover and Samuel Rosener, dated March 7th, 1889, and has not been since the execution of said deed and is not now vested with the legal title to all or to any part or portion of the land mentioned and described in said paragraph 11 of said amended and supplemental complaint in trust for said Thomas Bell, or to secure the payment of any sum or sums of money that were at any time advanced by said Thomas Bell to said John S. Bell; and that said George Staacke never has had and has not now any beneficial or other interest in or to said land or real property mentioned and described in said paragraph 11 and in this decree or in or to any part or portion thereof, or in or to any of the rents, issues or profits thereof; and that said George Staacke received and holds the naked legal title to all of the lands and real property conveyed to him by said Dwight W. Grover and Samuel Rosener for the sole purpose of conveying and to convey to the plaintiff all of that portion of the tract of land mentioned and described in said paragraph 11 so conveyed by said deed of March 7th, 1889, to him, said

Staacke, and to convey to said Thomas Bell or his heirs all that portion of the tract of land described in paragraph 11 of said amended and supplemental complaint, and for no other purpose whatsoever; and that said George Staacke had no power or authority by or under the terms of the trust upon, or under which said lands were so as aforesaid conveyed to him by said deed of March 7th, 1889, or otherwise, to borrow any money upon said lands or upon any part or portion thereof, or to mortgage said lands or any portion thereof or to deed or convey in trust or otherwise said lands or any part or portion thereof as security for the payment of any moneys borrowed by said George Staacke or by said Thomas Bell; and that said George Staacke had no power or authority as such trustee or otherwise to borrow \$60,000 or any other sum of money from the San Francisco Savings Union or to make any deed of conveyance to Thaddeus B. Kent and Henry C. Campbell of said lands or of any part or portion thereof in trust for the payment of \$60,000 or any other money or moneys borrowed from the San Francisco Savings Union; and that the borrowing of \$60,000 from the San Francisco Savings Union, and the making, execution and delivery by said George Staacke to said Henry C. Campbell and Thaddeus B. Kent of a deed of trust to secure the payment of \$60,000 was wrongful and in violation of the trust upon and under which said lands and real property were deeded to and held by said George Staacke; that said George Staacke did on or about the first day of February, 1892, wrongfully and in violation of the trust upon and under which said lands were deeded to and held by him borrow \$60,000 from said San Francisco Savings Union, and make, execute and deliver to said Thaddeus B. Kent and Henry C. Campbell a deed of trust purporting to convey said lands and real property as security for the payment of the \$60,000 so wrongfully and unlawfully borrowed by him; and that said \$60,000 so wrongfully and unlawfully borrowed by George Staacke was received by said Thomas Bell for his own use and benefit, except as John S. Bell

may have received the benefit or credit on his indebtedness to Thomas Bell.

Thirdly: That said George Staacke wrongfully and in violation of the trust upon and under which said lands were deeded to and held by him under said deed of March 7th, 1889, refuses to convey to the plaintiff or to his successors in interest that portion of the said lands described in said paragraph 11 in said amended and supplemental complaint.

Fourthly: That each and all of the sums of money advanced by said Thomas Bell to said John S. Bell from and after the 6th day of March, 1889, was and were made to John S. Bell individually and personally from motives of love and affection, and on the personal credit of said John S. Bell, and not under or upon or by reason of any claim or assertion of said Thomas Bell that the agreement of August 27th, 1889, between said Thomas Bell and John S. Bell set forth in paragraph VI of said amended and supplemental complaint remained or continued in force, or upon or under or by reason of any claim or assertion of any lien upon said land described in paragraph 11 of said amended and supplemental complaint or any part or portion thereof, or upon or under or by reason of any claim or assertion by said Thomas Bell or by said George Staacke that said deed of March 7th, 1889, was or had been made to said George Staacke as security for the payment of any money due to Thomas Bell or for any advances of money made by said Thomas Bell to said John S. Bell.

Fifthly: That the defendants George Staacke, and Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and each of said defendants and the attorney and attorneys, agent and agents of each of said defendants and any and all persons acting for or claiming any right, title or interest of, in or to the following described lands be and are enjoined and restrained; and are hereby commanded to refrain and desist from asserting, maintaining or pretending to have any right, title, interest, lien, claim or demand in, to, upon or against all or any part or portion of the follow-

ing described lands and real property, to-wit: All that real property situate in the County of Santa Barbara, State of California, forming a part of the rancho known as "Rancho de Los Alamos," to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Sixthly: That a writ of injunction issue out of and under the seal of this Court perpetually enjoining, restraining and commanding the defendants, and each of the defendants, and their and each of their agents and attorneys and any and all persons claiming by, through or under them from asserting, maintaining or pretending that either or any of them have any right, title, interest, claim or demand to, upon or against the lands or any part or portion of the lands last hereinabove mentioned and described.

Seventhly: That the plaintiff recover his costs in this action taxed at \$153.35, and that the special administratrix of the estate of Thomas Bell, deceased, pay the same in due course of administration.

Eighthly: That the defendant, Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, have and recover judgment against the plaintiff, John S. Bell, personally for the sum of fifty-two thousand one hundred and twenty and 15-100 dollars (\$52,120.15) with interest thereon at the rate of seven per cent. per annum from the 16th day of October, 1892.

Done in open Court this 29th day of June, 1901.

W. S. Day,

Judge of the Superior Court."

(Endorsed): Filed June 29th, 1901.

C. A. Hunt, Clerk.

8th—Your orator further says, complains and alleges upon information and belief that on the 8th day of July, 1901, the said George Staacke individually and said Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, served and filed a notice of appeal to the Supreme Court of the State of California from all that portion of said decree of said Superior Court included within the paragraphs in said decree

designated as "First," "Secondly," "Thirdly," "Fourthly," "Fifthly," "Sixthly" and "Seventhly"; and from all that portion of said decree immediately preceding the said "First" paragraph, and following the words "as executors of the will of Thomas Bell, deceased," that is, that portion of said decree commencing with the recital "that on the 7th day of January, 1901, upon a motion duly made by and on behalf of Katherine M. Bell and James L. Crittenden," and preceding the paragraph therein designated as "Eighthly"; that thereafter such proceedings were duly had and taken on said appeal from said decree to the Supreme Court, so taken as aforesaid, that said appeal from said judgment and decree was dismissed for want of jurisdiction by the said Supreme Court of the State of California, and the said judgment and decree thereby became and was affirmed; that said judgment and decree ever since has been and remained and still is in full force; and that said judgment and decree was and is a final adjudication of the rights and interests of the parties to said action in which it was rendered and entered; that the said Superior Court and the Judge thereof, in said action in which said judgment and decree was rendered, rendered and filed Findings of Fact and Conclusions of Law therein on the 6th day of March, 1901, and thereafter rendered and filed additional Findings of Fact and Conclusions of Law on the 7th day of June, 1901, on material issues raised by the pleadings in said action; that no motion for a new trial in said action of John S. Bell v. George Staacke, et al., and no notice of intention to move for a new trial therein was made, given, served or filed on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901; that the findings of fact and conclusions of law and the decision of said Superior Court in said action of John S. Bell v. George Staacke, et al., on the 9th day of July, 1901, became and ever since have been final, conclusive and binding upon all the parties to said action, and their successors in interest, and upon each and all of the

heirs of said Thomas Bell, deceased, and the jurisdiction and power of said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever and ceased to exist, and the said Superior Court and any and all appellate courts of the State of California, and the Supreme Court of the State of California lost and ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court; that it was declared and provided in and by the laws of the State of California and by the Act of the Legislature of the State of California entitled "An Act to establish a Code of Civil Procedure," approved March 11th, 1872, as amended in and by that certain Act of the Legislature of the State of California entitled "An Act to amend the Code of Civil Procedure," approved March 24th, 1874, and in and by section 659 of said Code of Civil Procedure as amended by said Act of March 24th, 1874, that "The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court, or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case * * *"; that it was declared and provided in and by section 254 of said Act of March 24th, 1874, that said Act should take effect on the first day of July, 1874; that said section 659 of The Code of Civil Procedure of California, as amended by said Act of March 24th, 1874, was and continued to be in full force from the first day of July, 1874, until May 20th, 1907, when it was amended by an Act of said Legislature of the State of California entitled "An Act to amend sections six hundred and fifty-six, six hundred

and fifty-nine, six hundred and sixty, and to re-number and amend section six hundred and sixty-three and a half of the Code of Civil Procedure, all relating to new trials," approved on March 20th, 1907, by the Governor of the State of California; that said section 659 was amended by said Act approved March 20th, 1907, so as to read as follows, "The party intending to move for a new trial must, within ten days after receiving notice of the entry of the judgment, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the Court, or a bill of exceptions, or statement of the case * * *"; that said section 659 of said Code of Civil Procedure of California and the provisions thereof as amended by said Act of March 20th, 1907, has been in full force since May 20th, 1907, and is now in full force; that said action in which said judgment and decree dated the 29th day of June, 1901, was rendered and filed, was tried without a jury by said Superior Court; that each and all of the defendants and attorneys for the defendants in said action in which said judgment and decree of June 29th, 1901, was rendered and filed had notice and well knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the time and as hereinabove in this paragraph and in this Bill alleged and shown; that, as your orator believes, said additional findings and conclusions of law were made, rendered and filed by said Superior Court and by the Judge of said Superior Court upon and at the special instance and request of the attorneys of and for the defendants in said action in which said decree and judgment dated June 29th, 1901, was rendered and filed; that it is provided and declared in and by section 955 of said Code of Civil Procedure that "The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal," and said sec-

tion 955 and the provisions thereof have been in full force and effect since said Act of March 11th, 1872, was enacted and went into effect, and is and now are in full force and effect; that the Supreme Court of California did not in or by its order judgment, and decree dismissing the appeal from said judgment and decree of said Superior Court dated and filed in said Superior Court on the 29th day of June, 1901, dismissed said appeal without prejudice to another appeal or to any other appeal and did not either expressly or otherwise provide or declare that the dismissal of said appeal was made expressly or otherwise without prejudice to another appeal or to any other appeal; that said appeal taken by the defendants from said judgment and decree dated June 29th, 1901, was dismissed by an order and judgment of the Supreme Court of the State of California duly made and rendered in bank on the 16th day of September, 1902, and that said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside; that the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision and the only decision of said Superior Court in said action entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," upon which said judgment and decree of said Superior Court was made and filed on the 29th day of June, 1901, as aforesaid; that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are in the words and figures following, to-wit:

In the Superior Court of the County of Santa Barbara, State of California.

John S. Bell, Plaintiff, vs. George Staacke, et al., Defendants.

Findings.

The above entitled action came on for trial on the 22d day of June, 1900, in its regular order upon the calen-

dar, before the above entitled Court, sitting without a jury, Hon. W. S. Day presiding, and the trial was thereupon and thereafter proceeded with in the 22nd, 23rd, 25th, 26th, 27th, 28th, 29th and 30th days of June, and on the 2nd day of July, 1900, and submitted to the Court for decision, Richards & Carrier, Esqs., and James L. Crittenden, Esq., appearing as attorneys for plaintiff on said trial, and Canfield & Starbuck, Esqs., appearing as attorneys for defendant Staacke and for defendant Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and T. Z. Blakeman, Esq., appearing as attorney for said special administratrix. Oral and documentary evidence was introduced on said trial by the respective parties; briefs thereafter were duly presented and submitted, and the Court having heard and considered all of the evidence and the briefs and arguments of counsel, now makes and files the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact.

The Court finds the following facts, to-wit:

First—That each and all of the allegations and averments in paragraphs I, II, III, IV and VII of the amended and supplemental complaint of plaintiff filed June 9, 1897, is and are true, except in that George Staacke is not now executor of the will of Thomas Bell, deceased, but was by order of Court made on the 23d day of March, 1900, suspended as such, and on the 4th day of May, 1900, his letters testamentary were revoked, and on the 23d day of March, 1900, the defendant, Teresa Bell, was by order of Court substituted in his place as administratrix with the will annexed and has qualified and is now acting as such.

Second—That on or about the 19th day of October, 1874, the plaintiff entered upon said tracts and parcels of land described in paragraphs II and III of said complaint, and took and entered into possession of all of said land and of all the personal property on said land as the property of the plaintiff, and thereafter and until the 18th day of March, 1885, remained and was in the

quiet, peaceable and notorious possession of all the land in said complaint described, and from and after the 18th day of March, 1885, until the 23d day of August, 1887, was and remained and continued in the quiet, peaceable and notorious possession of the tract and parcel of land and real property hereinabove in paragraph II of said complaint mentioned and described.

Third. That on the 23d day of August, 1887, the plaintiff sold and conveyed to Dwight W. Grover the land and real property mentioned and described in paragraph II of said amended and supplemental complaint, and that on August 23d, 1887, Thomas Bell sold and conveyed to said Dwight W. Grover the land and real property mentioned and described in paragraph III of said amended and supplemental complaint, and that the consideration to be paid by said Grover to the plaintiff and said Thomas Bell for said tracts of land was three hundred and fifty thousand dollars (\$350,000); that said Grover paid seventy thousand dollars of said consideration in money, and for two hundred and eighty thousand dollars of said purchase price of said tracts of land, made, executed and delivered to said Thomas Bell eight promissory notes, dated August 23d, 1887, each and all payable to his order, four of them being for sixteen thousand dollars each, payable in one, two, three and four years, respectively, from the dates thereof, and four of them being for fifty-four thousand dollars, each payable in one, two, three and four years, respectively, from the dates thereof, and in order to secure the payment of said four notes of sixteen thousand dollars each, did, on said August 23, 1887, make, execute and deliver to said Thomas Bell a mortgage in favor of said Thomas Bell upon the tract of land containing four thousand acres, described in paragraph III of said amended and supplemental complaint, and in order to secure the payment of said four notes for fifty-four thousand dollars each, did, on August 23rd, 1887, make, execute and deliver to said Thomas Bell a mortgage in favor of said Thomas Bell upon the tract of land containing ten thousand and sixty-seven and two-

tenths acres of land described in paragraph II of said amended and supplemental complaint;

That \$216,000.00 out of said \$280,000.00 was the balance of the purchase price of said 10,067 2-10 acre tract, and was represented by said four notes of \$54,000 and by the mortgage on said 10,067 2-10 acres executed by said Grover to secure the payment of the same, and that said John S. Bell was the real owner of said four notes of \$54,000 each and of the mortgage executed by said Grover on said 10,067 2-10 acre tract to secure the same; that said four notes of \$54,000 each and said mortgage were made and executed to said Thomas Bell for the purpose of rendering the execution of releases and partial releases of the mortgage more convenient and easy and in that way to facilitate and expedite such sales of portions of said tract of land as should be made by said Grover, as well as in furtherance of the agreement to which reference is made in the next succeeding finding herein.

Fourth—That on the 27th day of August, 1887, the plaintiff and said Thomas Bell, for the purpose of perpetuating an oral agreement that had been made and entered into by them prior to said sale and conveyance to said Grover, made and entered into the agreement in writing set forth at length in paragraph VI of said amended and supplemental complaint and dated August 27th, 1887.

Fifth—That the interest was not paid by said Dwight W. Grover or Samuel Rosenor upon said eight promissory notes given for the balance of the purchase price of said land, and prior to the 23rd day of November, 1888, the said Dwight W. Grover and Samuel Rosenor agreed to convey back said tracts of land in the event of their not paying on the 23rd day of November, 1888, the interest due on said notes on that date; the said Dwight W. Grover and Samuel Rosenor failed to pay and did not pay on the 23rd day of November, 1888, the interest due on said promissory notes; that on the 3rd day of January, 1889, said Thomas Bell commenced an action in the Superior Court of the said County of Santa Bar-

bara, State of California, to foreclose said mortgages.

Sixth—That after having made default in the payment of said interest due November 23rd, 1888, and after the commencement of said suit, and prior to March 7th, 1889, and prior to the execution of said deed of Grover and Rosenor to George Staacke, said Dwight W. Grover and Samuel Rosenor and John S. Bell and Thomas Bell agreed that said Grover and Rosenor should deed and convey back to the former owners of said property, to-wit: to John S. Bell the 10,067.2 acre tract, except the parts thereof that had been sold and conveyed to other parties by said Grover and Rosenor, and to Thomas Bell said 4000 acre tract of land, except such parts thereof as had been sold and conveyed by said Grover and Rosenor to other persons, and that said eight promissory notes should be transferred, surrendered and delivered to said Grover and Rosenor, and that mortgages that had been executed by said Grover to secure the payment of said notes should be released.

Seventh—That prior to the said agreement between Grover and Rosenor and John S. Bell and Thomas Bell for the re-conveyance of said tracts, it was agreed and understood by and between Thomas Bell and John S. Bell that the lands should be re-conveyed to them according to their original titles, except in so far as there had been sales made from the tract formerly belonging to John S. Bell, and it was also by them understood that the conveyance was to be made through defendant Staacke.

Eighth—That thereafter and on the 7th day of March, 1889, under and in pursuance of said agreements to convey back said tracts of land set forth in findings Sixth and Seventh, said eight promissory notes were surrendered and delivered to said Samuel Rosenor for himself and said Grover, and at the same time the release of the mortgages given to secure the same was duly made and executed by said Thomas Bell and delivered to said Samuel Rosenor, and said suit to foreclose said mortgage was dismissed by him; and at the same time said Dwight W. Grover and Samuel Rosenor,

under and in pursuance of said agreements to convey back said tracts of land, made, signed and acknowledged a deed of conveyance in writing purporting to grant and convey to George Staacke, one of the defendants in this action, the said lands and tracts of land sold and conveyed as aforesaid by said John S. Bell and Thomas Bell, respectively, to said Dwight W. Grover, excepting and reserving from the tract of land described in said paragraph 11 of said complaint all the town lots sold and conveyed by deed by John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos," situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell, September 15th, 1876, W. W. Bagster, Surveyor," and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1897, in Book B of Miscellaneous Records, page 406, and thereon numbered as follows: Lots 4, 6, 7, 8, 11, 14 to 22, both inclusive, and 25, in block 4; lots 8, 9, 14, 15, 16, 19 and 20 in block 5; lots 5 and 6 in block 6; lots 1 to 13, both inclusive, and lot 16 and lots 18 to 26, inclusive, in block 8; all block 9, except lots 21 and 22; all of block 16, except lots 12, 13, 23, 24, 25 and 26; all of block 17, except lots 1, 2, 3, 4, 5, 6, 19, 20 and 21; lots 20, 21 and 22 in block 18; lots 1 to 9, both inclusive, in block 20; lots 6 to 19, both inclusive, in block 21.

Also excepting all the land conveyed or donated prior to June 7th, 1887, by said John S. Bell, for county roads, streets and railroads, and the rights of the purchasers of lots in said Town of Los Alamos to the use of the streets and highways therein; also the cemetery plot adjoining said town, conveyed by John S. Bell by deed of June 7th, 1885.

Also excepting therefrom the following described parcels of land sold and conveyed by said Dwight W. Grover and Samuel Rosenor since August 23d, 1887: Lot 26 in block 4; lot 5 in block 4; lots 1, 2, 3 and 4 in block 21; lots 23 and 24 in block 4; lot 21 in block 9; lots 2 and 13 in block 4; lots 3, 4, 6, 17, 18, 21 and 22 in block

5; lots 19, 20 and 21 in block 17 of the Town of Los Alamos; Tract No. 28, containing 4.25 acres; Tracts Nos. 51, 52 and 53 containing 15 acres and Tract No. 23 containing 4.31 acres of land, of Grover, Rosenor and Irwin's Subdivisions of the Los Alamos Rancho.

Ninth. That said deed of Grover and Rosenor after having been received by one James Wheeler, the attorney who had prepared the same pursuant to said agreement to convey back said land and by him on the 3d day of June, 1889, filed for record in the office of the County Recorder of Santa Barbara County, and recorded in Book 24 of Deeds, page 495, et seq., was by said James Wheeler on June 6th, 1889, delivered to said George Staacke, but said George Staacke paid no consideration for the same and never took possession of said real property or any part thereof or assumed any control over the same under or by virtue of said conveyance, or otherwise.

Tenth. That within a few days after the execution by Grover and Rosenor of the deed of Staacke, to-wit: On or about the 10th day of March, 1889, the plaintiff entered upon the lands described in paragraph II of said amended and supplemental complaint, and took possession of the same as owner and at the same time assumed the same relations towards Thomas Bell and the two several tracts herein involved as had existed prior to the sale by John S. Bell and Thomas Bell to Grover, except that F. C. Hathaway first and thereafter Louis Jones, acted as agent by consent of both Thomas Bell and John S. Bell and so continued from that time until the appointment of receiver by this Court, the said agent, and the said Thomas Bell and the said John S. Bell, each performed certain duties in relation to both tracts. The said John S. Bell and the said Louis Jones as agent collecting all rents and keeping separate accounts between the two tracts and the two original owners, and shipping the said rents and proceeds to Thomas Bell at San Francisco, he carrying the proceeds of the 4,000-acre tract to his individual account and the proceeds of the 10,000-acre tract to the account of John S. Bell.

That said John S. Bell's possession was open, notorious and adverse to all the world, accompanied by the payment of all taxes levied against the property, except that he voluntarily submitted to and joined in the appointment of an agent who leased lands and collected rents, accounting to both John S. Bell, to whom they belonged, and to Thomas Bell, by whom they were disposed of, the disposition being by acquiescence in between John S. Bell and Thomas Bell for many years.

Eleventh. That said George Staacke had notice and well knew and understood at and before the execution and delivery to him of said deed of March 7th, 1889, and before the recording thereof, that the plaintiff had sold and deeded to said Grover the said land and real property described in paragraph II of said amended and supplemental complaint, and that there was due and owing to plaintiff from said Grover more than \$216,000 on account of the purchase price agreed to be paid therefor by said Grover for said tract of land, and that plaintiff had a lien upon said 10,067 2-10 acre tract of land described in paragraph II of said amended and supplemental complaint for the payment of the balance of the purchase price thereof, amounting to more than \$216,000, and that said Grover and Rosener had made and executed said deed of March 7th, 1889, to him, said Staacke, in consideration of the surrender of said notes amounting to \$216,000 given by said Grover for the balance of the purchase price of 10,067 2-10 acres of land and of the release of said mortgage given and executed by said Grover to secure the payment of said notes, and that John S. Bell had taken possession of and was in the actual, peaceable possession of all that portion of said 10,067 2-10 acre tract of land conveyed to said George Staacke by said deed of March 7th, 1889, and was asserting title thereto and claiming to be the owner in fee thereof.

Twelfth. That it was not agreed by the plaintiff, Thomas Bell and George Staacke, or by either or any of them, at the time of the execution by said Grover and Rosener of said deed of March 7th, 1889, or at any

other time, that said George Staacke should hold said land described in said conveyance, or any part thereof, as security for the payment by the plaintiff to said Thomas Bell of all or any sums of money which had theretofore been advanced by said Thomas Bell to the plaintiff or which were then due or owing by said plaintiff to said Thomas Bell, or for all or any sum or sums of money which said Thomas Bell should thereafter see fit to loan or advance to the plaintiff, or for interest thereon, or that said George Staacke should have the right to collect and receive the or any rents, issues or profits of said 10,067 2-10 acre piece of land or to apply the same to any indebtedness due by plaintiff to said Thomas Bell, or to any interest on such indebtedness, or to the payment of all or any taxes or assessments which should be levied upon said 10,067 2-10 acre piece of land, or that said George Staacke, as trustee under said or any deed or otherwise, should go into possession of said 10,067 2-10 acre piece of land, or any part thereof, or manage or control the same, or any part thereof.

Thirteenth. That George Staacke did not immediately upon the execution of said deed of March 7, 1889, by Grover and Rosener, or at any other time, go or enter into the possession of said 10,067 2-10 acre piece or tract of land, or of any part or portion thereof, and that the said George Staacke has never been in possession as trustee under said deed of March 7, 1889, or by his agents or in any manner whatsoever, of said 10,067 2-10 acre tract or of any part or portion thereof, and that the defendant Louis Jones is not now and never has been in the possession of said 10,067 2-10 acre piece of land or of any part or portion thereof as agent for said George Staacke as trustee or otherwise, and has not, as agent for said George Staacke as trustee or otherwise, collected or received any rents or issues or profits of said 10,067.2 acre piece of land, or of any part or portion thereof, and that the only rents, issues or profits of said land collected or received by the defendant Louis Jones prior to his appointment as receiver in this action were collected and received by

him for the plaintiff and as agent and superintendent under and for plaintiff and Thomas Bell as herein in Finding Tenth indicated.

Fourteenth. That the said Staacke did not become by reason of the execution and delivery of said deed of March 7, 1889, and has not been since the execution of said deed, and is not now vested with the legal title to all or any part or portion of the land described in paragraph II of the amended and supplemental complaint, and in said amended cross-complaint in trust for said Thomas Bell or to secure the payment of any sum or sums of money that were advanced by Thomas Bell to John S. Bell.

Fifteenth. That said George Staacke has no beneficial or other interest in said land or real property or in or to any part or portion thereof, or in or to any of the rents, issues or profits thereof, and holds the naked legal title to all of the lands and real property so conveyed by Grover and Rosener to him, said Staacke, in trust for the purpose of conveying and to convey and deed to the plaintiff all that portion of the tract of land described in paragraph II so conveyed by said deed of March 7, 1889, to said Staacke, and to convey to said Thomas Bell or his heirs all that portion of the tract of land described in paragraph III of said amended and supplemental complaint.

Sixteenth. That on the 3d day of February, 1892, Thomas Bell and George Staacke borrowed from the San Francisco Savings Union, a corporation, \$60,000 for the use of Thomas Bell, the said Staacke giving his note therefor, endorsed and guaranteed by said Thomas Bell, and the said George Staacke at the same time, to secure the payment thereof executed and delivered to said San Francisco Savings Union a trust deed upon all the real property conveyed to him by Grover and Rosener by deed of March 7, 1889. The proceeds of the loan, sixty thousand dollars, were by Thomas Bell credited to John S. Bell.

Seventeenth. That after the death of Thomas Bell and the admission of said Thomas Bell's will to pro-

bate and the due appointment and qualification of George Staacke and John W. C. Maxwell, as executors of said Thomas Bell's estate, the San Francisco Savings Union presented to said executors a claim against the estate of said Thomas Bell, deceased, upon said note of \$60,000, which claim was duly approved and allowed by said George Staacke and John W. C. Maxwell, as executors of the last will of Thomas Bell, deceased, and by the Superior Court of the State of California, in and for the City and County of San Francisco, having jurisdiction of said estate, and that said claim so approved and allowed was thereafter duly filed in the matter of the estate of said Thomas Bell, deceased, in the Superior Court having jurisdiction of said estate and that said claim is still held by said San Francisco Savings Union against the estate of Thomas Bell, deceased, and against said George Staacke, and John W. C. Maxwell, executors of the estate of Thomas Bell, deceased, as a valid claim upon and against said estate, and that the same is a valid claim against said estate of said Thomas Bell, deceased.

Eighteenth. That no authority was given to or vested in said George Staacke by or under the agreements hereinabove found to have been made and entered into by said Dwight W. Grover, Samuel Rosener, John S. Bell and Thomas Bell, or by or under the terms of the trust upon which said lands were so as aforesaid conveyed to George Staacke by said deed of March 7, 1889, to borrow any money upon said lands or any part or portion thereof, or to mortgage said lands or any part or portion thereof or to deed or convey in trust or otherwise said lands or any part or portion thereof as security for the payment of any moneys borrowed by said George Staacke or by Thomas Bell and that said George Staacke had no power or authority as such trustee to borrow said \$60,000 from the San Francisco Savings Union, or any part or portion thereof, or to make or execute the said deed of conveyance to Thaddeus B. Kent and Henry C. Campbell, or to convey the said lands or any part or portion thereof in trust for the

payment of said loan of \$60,000 or for the payment of any part thereof, and that the borrowing of said \$60,000 and the making, execution and delivery of said deed to said Henry C. Campbell and Thaddeus B. Kent was wrongful and in violation of the trust upon and under which said lands were held by said Staacke; that all of the \$60,000 borrowed by said Staacke from said San Francisco Savings Union, as aforesaid, was received by said Thomas Bell for his individual use and benefit, except as John S. Bell may have received the benefit of credit on his indebtedness to Thomas Bell.

Nineteenth. That said George Staacke wrongfully and in violation of said trust refuses to convey to the plaintiff that portion of said 10,067 2-10 acre tract conveyed to him, said Staacke in and by said deed of March 7, 1889.

Twentieth. That each and all of the sums of money advanced by said Thomas Bell to John S. Bell from and after the 6th day of March, 1889, was and were made to John S. Bell individually and personally from motives of love and affection and in the same manner as such advances had been made prior to the sale of the land to Grover on the personal credit of said John S. Bell, and not under, upon or by reason of any claim or assertion on the part of said Thomas Bell and that said agreement of August 27th, 1889, between said Thomas Bell and John S. Bell remained or continued in force, or upon, under or by reason of any claim or assertion of any lien upon said 10,067 2-10 acre tract, or upon or under or by reason of any claim or assertion by said Thomas Bell or by said George Staacke that said deed of March 7th, 1889, was or had been made to said George Staacke as security for the payment of any money due to Thomas Bell or for any advances of money made by said Thomas Bell to John S. Bell.

Twenty-first. That said Thomas Bell subsequent to the 27th day of August, 1887, made advances of money to said John S. Bell which, after deducting moneys paid by John S. Bell to Thomas Bell aggregated, with interest on March 7th, 1889, \$69,259.64; that between March

7, 1889, and February 2, 1892, Thomas Bell made advances of money to John S. Bell aggregating \$32,947.68 and received between March 7, 1889, and February, 1892, divers sums of money from and on account of John S. Bell, aggregating \$16,054; that said Thomas Bell made advances to John S. Bell between February 2nd, 1892, and October 16th, 1892, aggregating \$6743.01; that Thomas Bell received between February 2, 1892, and October 16, 1892, divers sums of money from and on account of John S. Bell, aggregating \$1933.76.

Twenty-second. That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15, but that said indebtedness, and the claim of Thomas Bell for said indebtedness was not nor was any part of it a lien upon the land or any of the land conveyed by said deed and conveyance made on March 7th, 1889.

Twenty-third. That the cause of action to recover the \$52,120.15 found in the last finding to have been due to Thomas Bell from John S. Bell on October 16, 1892, is not barred by the provisions of Sections 312, 335 and 343 of the Code of Civil Procedure of the State of California, or by any provisions of any of said sections.

Conclusions of Law.

1. That the plaintiff is entitled to a good and sufficient deed of conveyance from said George Staacke of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, and to a decree that said George Staacke make, execute and deliver to the plaintiff a good and sufficient deed and conveyance of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889.

2. That the plaintiff is entitled to an injunction enjoining and restraining said George Staacke and said

Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and any and all persons claiming by or through or under them or either of them, from asserting or claiming any right, title or interest to any or to all of that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, being the land described in the cross-complaint of the defendants and in paragraph II of said amended and supplemental complaint.

3. That the plaintiff is entitled to his costs in this action incurred and to a judgment therefor.

4. That said defendant Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, is entitled to judgment herein against said plaintiff John S. Bell for the sum of fifty-two thousand one hundred and twenty and 15-100 dollars, with interest thereon from the 16th day of October, 1892.

Dated: Santa Barbara, California, March 6, 1901.

W. S. Day,

Judge of the Superior Court.

(Endorsed: "Filed March 6th, 1901. C. A. Hunt, Clerk.")

In the Superior Court of the County of Santa Barbara,
State of California.

John S. Bell, Plaintiff, vs. George Staacke, et al., Defendants.

Additional Findings.

It appearing to the Court that in the findings of fact in the above entitled action, heretofore made and filed on March 6th, 1901, there is an omission to dispose of the issue of fact raised by the plaintiff's amendment to his answer to the defendants' amended cross-complaint, which amendment to plaintiff's said answer was filed June 17th, 1897, and it appearing further to the Court that said omission was through inadvertence;

Now therefore, in as much as the judgment has not yet been made or entered on said findings, the Court of its own motion, to supply said omission in said findings and upon the evidence submitted at the trial of said

action, makes the following additional findings of fact and conclusions of law, to-wit:

The Court finds:

1. That the indebtedness of plaintiff to Thomas Bell prior to his decease as alleged by defendants, contains no illegal charges.

2. That no indebtedness current or otherwise exists or existed in the sum of seventy-five thousand dollars or in any sum, of Thomas Bell to plaintiff for continuous or any services rendered by plaintiff to said Thomas Bell at any time or on any account.

Conclusions of Law.

The Court concludes from the foregoing that the plaintiff is not entitled to any set-offs or counter-charges against the account of said Thomas Bell with the plaintiff other than for the moneys received by said Thomas Bell and credited in said account, as in finding "Twenty-first" in the findings hereinbefore filed on March 6th, 1901, specified, and is not entitled to have the said account of Thomas Bell with plaintiff surcharged and falsified in any respect.

Dated this 7th day of June, 1901.

W. S. Day, Judge.

(Endorsed): Filed June 7th, 1901. C. A. Hunt, Clerk.

9th. Your orator further complaining, says, avers and alleges on information and belief that said Thomas Frederick Bell, Mary T. Holman, Robina Vellguth, Eustace Reginald Bell, Muriel Bell, and Teresa Bell were and are the only heirs at law of Thomas Bell, deceased; that said George Staacke acting under and in accordance with said judgment and decree and the order therein made and contained, made, signed, acknowledged and executed to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of said County of Santa Barbara, and as Clerk of said Superior Court, a good and sufficient deed and conveyance in due form of law, wherein and whereby he, the said George Staacke, granted, conveyed and transferred to the said James L.

Crittenden in fee simple an undivided one-half of all of said tract, piece and parcel of land containing 10,067.2 acres, and to said Catherine M. Bell in fee simple an undivided one-half of, in and to said tract, piece or parcel of land of 10,067.2 acres describing in said deed and conveyance said tract, piece and parcel of land of 10,067.2 acres and that the transfer, grant and conveyance by said George Staacke so made by and contained in said deed of conveyance so as aforesaid delivered to C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk for and for the benefit of James L. Crittenden and Catherine M. Bell and became and was an absolute grant, deed, transfer and conveyance of the title and fee of, in and to said tract, piece and parcel of land of 10,067.2 acres, to said James L. Crittenden and Catherine M. Bell and vested in each of them an undivided one-half of said lands and of each and every part and portion thereof; and that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901;

That the said U. S. Oil & Land Company was duly created, and organized under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said Territory of Arizona and in said City and County of San Francisco, and was such corporation on the 18th day of September, 1902, and for a long time prior thereto, and has ever since been a corporation, and is now a corporation existing by and under the Constitution and Laws of the State of Arizona; that on or about the 14th day of February, 1912, said Territory of Arizona became and was admitted as a State and one of the United States of America and ever since has been and now is a State;

That on or about the 5th day of April, 1905, said George Staacke died testate in the City and County of San Francisco, State of California, a resident of said City and County, leaving property therein; that thereafter the last will and testament of said George Staacke was filed for probate in the Superior Court of the City

and County of San Francisco, State of California; that thereafter in the month of April, 1907, a petition in writing was filed by George Henry Howard for the probate of the last will and testament of said George Staacke, deceased, in the said Superior Court of the City and County of San Francisco, and on the 19th day of April, 1907, an order and decree was duly given and made in said last mentioned Superior Court admitting the last will and testament of said George Staacke to probate, and appointing said George Henry Howard executor of the estate and of the last will and testament of said George Staacke, deceased; that on the said 19th day of April, 1907, letters testamentary of and upon the estate and of the last will and testament of said George Staacke, deceased, were duly issued out of and by said Superior Court of the City and County of San Francisco to said George Henry Howard, and a duplicate filed in the office of the Clerk of said Court, and that said George Henry Howard thereupon duly qualified and entered upon the discharge of his duties as such executor and has ever since been and now is the executor of the estate and of the last will and testament of said George Staacke, deceased;

That on the 18th day of September, 1902, said James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the U. S. Oil & Land Company, plaintiffs herein, by a good and sufficient deed, dated September 18, 1902, signed and acknowledged by them, an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; and that said deed was thereafter and on the 26th day of September, 1902, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 84 of Deeds, at page 253 et sequiter;

That on the 5th day of July, 1910, said U. S. Oil & Land Company for a valuable consideration sold, granted, transferred and conveyed in fee simple an undivided one-half of said 10,067.2 acres and tract of land to the San Luis Land and Improvement Company, a corpora-

tion, by good and sufficient deed dated the 5th day of July, 1910, duly signed and acknowledged by it and its President and Secretary, and that said deed was thereafter and on the 5th day of July, 1910, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 128 of Deeds, at page 101 et sequiter.

10th. Your orator further complaining, says, avers and alleges on information and belief that on the 23rd day of August, 1898, an action was commenced in the Superior Court of the State of California, in and for the County of Santa Barbara, by the filing of a complaint, and that said action was entitled "Kate M. Bell, James L. Crittenden and Sydney M. Van Wyck, Jr., Plaintiffs, v. San Francisco Savings Union, Thaddeus B. Kent, George Staacke, Henry C. Campbell, Edward B. Pond, Teresa Bell, Thomas Frederick Bell, Maria Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Ustace Bell, Teresa Bell as Guardian of the persons and estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and John W. C. Maxwell and George Staacke as executors of the estate and of the last will and testament of Thomas Bell, deceased, John Doe, Richard Roe, Jane Doe and Mary Doe, defendants"; that said action was numbered in said Superior Court of Santa Barbara County as No. 4424, and that thereafter by an order duly made and filed on the 6th day of October, 1903, and by summons issued on defendants' cross-complaint said U. S. Oil & Land Company was brought in as a defendant to the cross-complaint in said action; that on the 17th day of December, 1902, an order in said action No. 4424 was duly made and filed in said Superior Court wherein and whereby said Mercantile Trust Company of San Francisco was made a party defendant and it and said San Francisco Savings Union, Henry C. Campbell and Edward B. Pond were given permission to serve and file a supplemental complaint and also a cross-complaint; that on or about the 12th day of October, 1903, a cross-complaint on the part of and by said San Francisco Savings

Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco against said Kate M. Bell, James L. Crittenden, Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the said U. S. Oil & Land Company, as defendants to said cross-complaint, was made and filed in said action; that answers to said amended cross-complaint were duly made, served and filed by each and all of said defendants to said cross-complaint in said action No. 4424; that answers to the complaint as amended in said action No. 4424 were duly made, served and filed by said San Francisco Savings Union, Edward B. Pond, Henry C. Campbell, Mercantile Trust Company of San Francisco, George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased; that thereafter a trial of the issues raised in and by the pleadings in said action No. 4424 and a decision consisting of Findings of Fact and Conclusions of Law was made, rendered and filed in said Superior Court by the Judge thereof on the 14th day of March, 1905, and on the same day a judgment and decree was duly made and filed in said action No. 4424 in said Superior Court by the Judge thereof; that said decision consisting of Findings of Fact and Conclusions of Law in said action No. 4424 found and filed as aforesaid is in the words and figures following, to-wit:

In the Superior Court of the County of Santa Barbara,
State of California.

Kate M. Bell and James L. Crittenden,

Plaintiffs,

vs.

San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell, as Guardian of the Persons and Estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard

Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco,

Defendants.

U. S. Oil & Land Company,

Defendant to cross-complaint.
Decision.

The complaint in the above-entitled action having been duly filed in the office of the Clerk of this Court on the 23rd day of August, 1898, and a summons herein having been thereupon duly issued on said day and said summons together with copies of said complaint having been duly served upon the above-named defendants Teresa Bell and Teresa Bell as Guardian of the Persons and Estates of Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, on the 17th day of February, 1899, and upon the above-named defendants Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell on the 25th day of February, 1899, and upon the above-named defendants Thomas Frederick Bell and Marie Teresa Bell on the sixth day of March, 1899, and no further proceedings having been taken or had herein against said defendants or any of them and none of said defendants having appeared herein and no summons nor any copy of said or any complaint herein having been served on the above-named defendants John Doe, Richard Roe, Jane Doe and Mary Roe or any of them and none of said defendants John Doe, Richard Roe, Jane Doe and Mary Roe having appeared herein and the issues arising upon said complaint and the answers thereto of the above-named defendants San Francisco Savings Union and Edward B. Pond and of Henry C. Campbell, originally a defendant hereto, but now deceased, filed herein on the third day of October, 1898, and by order duly entered herein on the 17th day of September, 1902, ordered to stand as also the answer herein of the above-named defendant Mercantile Trust Company of San Francisco and the answer thereto of the above-named defendant George Staacke and George Staacke as executor of the estate and of the last will and testament of Thomas Bell, deceased, originally a defendant here-

to, but now removed, filed herein on the third day of January, 1899, and the amendments of said complaint filed herein on the 27th day of September, 1899, and the amendment and supplement filed by the above-named defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, on the 29th day of March, 1902, of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and the amended supplemental answer of said defendants San Francisco Savings Union, Edward B. Pond and Mercantile Trust Company of San Francisco and of said Henry C. Campbell and the amended cross-complaint of said defendant San Francisco Savings Union, Edward B. Pond, George Staacke and Mercantile Trust Company of San Francisco and of said Henry C. Campbell and of the above-named defendant Thaddeus B. Kent, both filed herein on the 12th day of October, 1903, and the answer of said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and of said Henry C. Campbell filed herein on the second day of November, 1903, to said amendment and supplement of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and the answer of said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed filed herein on the 29th day of February, 1904, to said amended cross-complaint and the answer of the above-named plaintiffs Kate M. Bell and James L. Crittenden and of the above-named defendant to cross-complaint U. S. Oil & Land Company filed herein on the 4th day of March, 1904, to said amended cross-complaint and the amendment and supplement filed on the 13th day of June, 1904, of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and of and to said amendment and supplement thereof and thereto so filed herein on the 29th day of March, 1902, as aforesaid having been duly brought by said defendants San Francisco Savings Union, Ed-

ward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and by said Henry C. Campbell to trial by the Court on the 13th day of June, 1904, and having been tried by the Court on said days and on the 14th, 15th and 16th days of said month and on the 20th, 21st, 22nd and 23d days of September, 1904, James L. Crittenden, Esq., appearing as counsel for said plaintiffs and for said defendant to cross-complaint U. S. Oil & Land Company, Henry P. Starbuck, Esq., appearing as counsel for said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and for said Henry C. Campbell and Theodore Z. Blakeman, Esq., appearing as counsel for said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the giving of evidence having been completed on said 23rd day of September, 1904, and the arguments of counsel having been heard and the cause having been on the 31st day of October, 1904, finally submitted for decision and due deliberation having been had thereon and the said Henry C. Campbell having died on the third day of January, 1905, and the Court by order duly entered herein on the 20th day of February, 1905, having allowed this action to be continued against and by said defendant Mercantile Trust Company of San Francisco as successor in interest to said Henry C. Campbell as well as in its own interest as a defendant hereto, the Court now gives its decision in writing and as required by Section 633 of the Code of Civil Procedure separately states the facts found and the conclusions of law as follows:

Facts Found.

1. That said defendant San Francisco Savings Union is and during all the time and times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City of San Francisco in said State.
2. That said defendant Mercantile Trust Company

of San Francisco was on the first day of November, 1900, and for a long time prior thereto and has been ever since a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City of San Francisco in said State.

3. That said defendant to cross-complaint U. S. Oil & Land Company was on the 18th day of September, 1902, and for a long time prior thereto and has been ever since a corporation created, organized and existing under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said territory in said City of San Francisco.

4. That on and prior to the 19th day of October, 1874, Thomas Bell was the owner and in possession of both and each of two several tracts of land, situated and bounded and described as follows:

First. All that portion of that tract of land situate in the third township of the County of Santa Barbara in the State of California, known as the "Rancho de Los Alamos," which said portion of said rancho is bounded and described as follows, to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Second. All that certain other portion of the said "Rancho de Los Alamos" bounded and described as follows, to-wit: Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance bearing date the sixteenth (16th) day of August, A. D. one thousand eight hundred and sixty-seven (1867), and thence running due east unto the westerly line of the tract of land hereinbefore described; thence running along the said westerly line to its intersection with the northern boundary line of said "Rancho de Los Alamos"; thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada, to the place of beginning, containing about four thousand (4000) acres of

land.

5. That John S. Bell was a nephew of said Thomas Bell and on and for many years prior to said 19th day of October, 1874, and thereafter until the death of said Thomas Bell as hereinafter found relations of great love and affection existed between said Thomas Bell and said John S. Bell, by reason whereof said Thomas Bell had brought up, educated and supported said John S. Bell from childhood and was still supporting said John S. Bell and his family at said date.

6. That to enable said John S. Bell to support himself and his family, said Thomas Bell by grant bearing date on said 19th day of October, 1874, and recorded in the office of the Recorder of said County of Santa Barbara on the 27th day of October, 1874, in Book N of Deeds at page 162 conveyed both and each of said two several tracts of land to said John S. Bell as a gift in consideration of the relationship of blood between said Thomas Bell and said John S. Bell and the love and affection which said Thomas Bell had and entertained for said John S. Bell and without any other or valuable consideration him thereunto moving.

7. That said John S. Bell thereupon and under and by virtue of said grant took possession of said two several tracts of land and of both and each of them and entered upon the management thereof, but was unsuccessful in managing the same and unable to support himself and his family therefrom and said Thomas Bell thereupon and from time to time thereafter advanced to said John S. Bell for the support of himself and his family and for other purposes divers sums of money in evidence whereof said John S. Bell on the second day of February, 1884, executed and delivered to said Thomas Bell his promissory note for the sum of thirty thousand dollars payable two years after date, with interest thereon at the rate of seven and one-half per cent. per annum and as security for the payment of the same made, executed and delivered to said Thomas Bell a mortgage of the first above described of said two several tracts of land except that portion thereof included

within the bounds of the 'Town of Los Alamos bearing date on said day and recorded in said Recorder's office in Book N of Mortgages at page 48 on the 16th day of February, 1884.

8. That thereafter said John S. Bell continued to be unsuccessful in the management of said two several tracts of land and to be unable to support himself and his family therefrom and said Thomas Bell continued to advance to said John S. Bell further large sums of money in payment of a part, to-wit: Fifty thousand dollars, whereof said John S. Bell re-conveyed to said Thomas Bell the second above-described of said two several tracts of land by grant bearing date on the 18th day of March, 1885, and recorded in said Recorder's office in Book 5 of Deeds at page 415, but left unpaid at the date of said grant a part of said sums of money which thereafter on the third day of April, 1885, amounted with interest to the sum of five thousand five hundred and two 06-100 dollars.

9. That thereafter said John S. Bell borrowed the further sum of ten thousand dollars from Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron, for which he executed and delivered to them on the 25th day of March, 1885, his promissory note for said sum, payable one year after date, with interest at seven and one-half per cent. per annum, and to secure the payment of the same made, executed and delivered to them a mortgage of said first above-described of said two several tracts of land, except said portion thereof included within the bounds of the 'Town of Los Alamos, bearing date on said day and recorded in said Recorder's office in Book N of Mortgages at page 429 on the 27th day of March, 1885.

10. That thereafter by assignment bearing date on the fifth day of June, 1885, and recorded in said Recorder's office in Book 73 of Assignments at page 47 on the 12th day of June, 1885, said Thomas Bell assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron said mortgage so made, executed and delivered to said

Thomas Bell by said John S. Bell and recorded in said Recorder's office in Book N of Mortgages at page 48 as aforesaid.

11. That thereafter said John S. Bell borrowed the further sum of not less than twenty thousand dollars from Daniel Harris and to secure the payment thereof conveyed to said Daniel Harris by grant intended as a mortgage bearing date of the 13th day of September, 1885, and recorded in the office of said Recorder in Book 6 of Deeds at page 386 on the 10th day of October, 1885, the first above-described of said two several tracts of land except such town lots in said town of Los Alamos as said John S. Bell had previously conveyed to other persons.

12. That thereafter by agreement in writing bearing date on the 11th day of April, 1887, and recorded in the office of said Recorder in Book 13 of Deeds at page 340 on the 19th day of April, 1887, said Thomas Bell and John S. Bell agreed with Dwight W. Grover to sell to said Dwight W. Grover for the sum of three hundred and fifty thousand dollars, both and each of said two several tracts of land except county roads, railroads and town lots theretofore conveyed in said Town of Los Alamos.

13. That thereafter and in order that said agreement to sell said two several tracts of land to said Dwight W. Grover might be performed on the part of said John S. Bell, said Thomas Bell satisfied both of said mortgages so respectively made, executed and delivered and assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron as aforesaid and further repaid to said Daniel Harris the sum so borrowed from said Daniel Harris by said John S. Bell as aforesaid and thereupon by grant bearing date on the fourth day of June, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 609 on the 27th day of August, 1887, said Daniel Harris re-conveyed to said John S. Bell said first above-described of said two several tracts of land, except said town lots so conveyed by said John S.

Bell to other persons as aforesaid, and by two satisfactions, both bearing date on the fifth day of August, 1887, and recorded in the office of said Recorder on the 27th of August, 1887, in Book C of Satisfaction of Mortgages at page 303 and 304, respectively, said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron satisfied both and each of said mortgages so respectively made, executed and delivered and assigned to them as aforesaid.

14. That thereafter by grant bearing date on the 23rd day of August, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 613 on the 27th day of August, 1887, said Thomas Bell and John S. Bell pursuant to said agreement and in performance thereof on their part conveyed to said Dwight W. Grover for the recited consideration of three hundred and fifty thousand dollars both and each of said two several tracts of land, except county roads, streets, railroads, cemetery and town lots sold and conveyed by said John S. Bell prior to the seventh day of April, 1887, but through inadvertence said grant was so worded as to suggest a doubt whether the second above-described of said two several tracts of land was effectually conveyed thereby.

15. Pursuant to said agreement and in performance thereof on his part, said Dwight W. Grover paid to said Thomas Bell in cash the sum of seventy thousand dollars, being a part of said above-mentioned sum or purchase price of three hundred and fifty thousand dollars and paid the balance thereof by eight promissory notes in writing, all bearing date on the 23rd day of August, 1887, by four whereof said Dwight W. Grover promised to pay to said Thomas Bell four sums of fifty-four thousand dollars apiece in one, two, three and four years from said date, respectively, with interest payable quarterly from said date of said notes, and by four whereof said Dwight W. Grover promised to pay to said Thomas Bell four other sums of sixteen thousand dollars apiece, also in one, two, three and four years from said date,

respectively, with interest payable quarterly from said date of said notes, but all of said sums were by the terms of said promissory notes to become due upon default of one month in the payment of any installment of interest on the same respectively.

16. That to secure the payment of said four promissory notes for fifty-four thousand dollars apiece said Dwight W. Grover made, executed and delivered to said Thomas Bell a mortgage of said first-above described of said two several tracts of land, except county roads, streets, railroads, cemetery and town lots sold and conveyed by said John S. Bell prior to the seventh day of April, 1887, bearing date on the 23rd day of August, 1887, and recorded in said Recorder's office in Book B of Mortgages at page 612 on the 27th day of August, 1887, and to secure the payment of said four promissory notes for sixteen thousand dollars apiece said Dwight W. Grover made, executed and delivered to said Thomas Bell a mortgage of said second above-described of said two several tracts of land bearing date on the 23d day of August, 1887, and recorded in the office of said Recorder in Book S of Mortgages at page 116.

17. That thereafter by agreement bearing date on the 24th day of August, 1887, and recorded in the office of said Recorder in Book C of Satisfactions of Mortgages at page 301 on the 27th day of August, 1887, said Dwight W. Grover promised and agreed in case of the sale by him of any portions of said two several tracts of land and in consideration of the release of such portions by said Thomas Bell from the lien of said mortgages to pay to said Thomas Bell on account of the indebtedness so secured by said mortgages respectively four-fifths of any cash received from the sale of any land covered thereby and to assign to said Thomas Bell any mortgages taken to secure deferred payments for said land.

18. That thereafter by grant bearing date on the 25th day of August, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 617 on the 27th day of August, 1887, said Dwight W. Grover

conveyed to Samuel Rosener an undivided three-fifths of both and each of said two several tracts of land, except said county roads, streets, railroads, cemetery and town lots, and by grant bearing date on the 25th day of August, 1887, and recorded in said Recorder's Office in Book 15 of Deeds at page 622 on the 27th day of August, 1887, said Samuel Rosener conveyed to Joseph N. H. Irwin an undivided two-fifths of both and each of said two several tracts of land, except as aforesaid.

19. That in the meantime and since said third day of April, 1885, said Thomas Bell had continued to make further advances of money to said John S. Bell, which on the 24th day of August, 1887, amounted, with advances previously made and interest, to the sum of nine thousand four hundred and twenty-three 25-100 dollars and thereafter on the 27th day of August, 1887, said Thomas Bell and John S. Bell made and executed an agreement between themselves in words and figures as follows, to-wit:

"Agreement made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California.

Whereas, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre, and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell, except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely, two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand on that of Thomas Bell, were made to Thomas Bell.

And whereas, the said Thomas Bell has heretofore

from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed, having been made, examined and found correct and it is settled that the said John S. Bell is now indebted to the said Thomas Bell in the sum of twenty-five thousand five hundred and twenty-nine 5-100 dollars in United States gold coin, which sum is to bear interest from this date at the rate of six per cent per annum.

Now it is agreed between said parties that the said Thomas Bell shall hold said notes and mortgages for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said John S. Bell, with like interest from the date of making the same; after which he shall, on demand, assign the same to said John S. Bell.

This agreement shall bind and be for the benefit of the heirs, executors, administrators and assigns of both of said parties.

Witness our hands the day and year first above written.

(Signed) Thomas Bell.

John S. Bell."

Triplicate.

John S. Bell, Esq., in account with Thomas Bell.

1887	Dr.		
Aug. 24	Balance a-c rendered this date.....	\$ 9,423.25	
" "	'Transfer to Dan'l Harris' acct.....	21,695.31	
" 25	Paid Barron heirs for your notes.....	40,000.00	
	Interest \$30,000 to 24 inst. 1 22-30		
	mo. at $7\frac{1}{2}$ pr. ct.....	325.00	
	Int. on \$10,000 to 24 inst. 1 29-20		
	mo. at $7\frac{1}{2}$ pr. ct.....	122.92	
" "	Pd. I. M. Lesser, search of		
	titles abstract	\$250	
	Jas. Wheeler, services in re		
	sale of land.....	200	
	Jas. Wheeler, exps. copying.....	20	
		\$470	
	prop. 27-35	367.57	
" "	Pd. you this date.....	100.00	
" 26	do	2,500.00	
			\$74,529.05

1887	Cr.		
Aug. 25	Rec'd acct. D. W. Grover		
	27-35 of	\$70,000	
	1st installment	54,000	
	less previously paid.....	5,000	
Aug. 26	Bal. brought down.....	25,529.05	
			\$74,529.05

E. E.

San Francisco, Aug. 25th, 1887. Thomas Bell.

Examined and found correct. John S. Bell.

1887

Aug. 27 Bal. in my favor.....\$29,529.05

20. That the sum of twenty-one thousand six hundred and ninety-five 31-100 dollars mentioned in the account annexed to said agreement was with interest the sum so borrowed from said Daniel Harris by John S. Bell and so repaid by said Thomas Bell to said Daniel Harris as aforesaid and the sums of forty thousand dollars, three hundred and twenty-five dollars and one hun-

dred and twenty-two 92-100 dollars also mentioned in said account were the amounts paid by said Thomas Bell in satisfaction of the two mortgages, so respectively made, executed and delivered and assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron, and Eustace Barron as aforesaid.

21. That thereafter by grant bearing date on the eighth day of June, 1888, and recorded in the office of said Recorder in Book 21 of Mortgages at page 441 on the ninth day of June, 1886, said Joseph N. H. Irwin re-conveyed to said Samuel Rosener said premises so conveyed to said Joseph N. H. Irwin by said Samuel Rosener by grant bearing date on the 25th day of August, 1887, and recorded in said Recorder's office in Book 15 of Deeds at page 622 on the 27th day of August, 1887, as aforesaid.

21. That theretofore and thereafter and between said 24th day of August, 1887, and the seventh day of March, 1889, said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin sold and said Thomas Bell released from the lien of said mortgage of said first above-described of said two several tracts of land seventeen small portions of said first above-described of said two several tracts of land and pursuant to said agreement so bearing date on the 24th day of August, and recorded in Book C of Satisfactions of Mortgages at page 301 as aforesaid said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin paid to said Thomas Bell four-fifths of all cash received for the same and assigned to said Thomas Bell six mortgages taken to secure deferred payments therefor, two whereof were thereafter and before said seventh day of March, 1889, satisfied by the payment to said Thomas Bell of the amounts of money secured thereby and all said moneys so received by said Thomas Bell were by him duly credited to said Dwight W. Grover on account of the first of said four promissory notes for fifty-four thousand dollars apiece pursuant to said agreement so bearing date on the 24th day of August, 1887, and recorded in the office of said Recorder in Book C of Satisfactions of

Mortgages at page 301 as aforesaid and further credited to said John S. Bell pursuant to said agreement between said Thomas Bell and said John S. Bell so bearing date on the 27th day of August, 1887, as aforesaid.

22. That in the meantime and between said 27th day of August, 1887, and the seventh day of March, 1889, said Thomas Bell continued to make further advances of money to said John S. Bell whereby the indebtedness of said John S. Bell to said Thomas Bell was increased, notwithstanding said credits and became and was the sum of \$40,850.27 on the 14th day of January, 1888, and more than \$54,000 in September, 1888, and \$66,544.62 on the 31st day of December, 1888.

23. That said Dwight W. Grover defaulted in the payment of all and every of the installments of interest that became due on said eight promissory notes on the 23rd day of February, 1888, and after extending to and including the 23rd day of November, 1888, the time for payment of all arrears of interest that accrued on said promissory notes to and including said date in consideration of a promise on the part of said Dwight W. Grover and Samuel Rosener to re-convey said two several tracts of land except said county roads, streets, railroads, cemetery and town lots and also except such portions thereof as has been sold by said Dwight W. Grover and said Samuel Rosener and after the refusal of said Dwight W. Grover and Samuel Rosener to perform said promise said Thomas Bell commenced on the third day of January, 1889, two actions in the Superior Court of the County of Santa Barbara in the State of California to foreclose respectively said two mortgages made, executed and delivered to said Thomas Bell by said Dwight W. Grover to secure the payment of said promissory notes as aforesaid.

24. That thereafter and pending said actions and both and each of them said Dwight W. Grover and Samuel Rosener offered in consideration of the satisfaction of said mortgages and the dismissal of said actions and the cancellation of said promissory notes to reconvey said two several tracts of land except county roads,

streets, railroads, cemetery and town lots and portions so sold by them as aforesaid and said Thomas Bell and John S. Bell thereupon accepted said offer and pursuant thereto and to said acceptance thereof said Dwight W. Grover and Samuel Rosener by grant bearing date on the seventh day of March, 1889, and recorded in the office of said Recorder in Book 24 of Deeds at page 495 on the third day of June, 1889, conveyed at the request of said Thomas Bell and with the knowledge, consent and acquiescence of said John S. Bell to said defendant George Staacke, who was at that time the partner and personal confidential clerk of said Thomas Bell and who personally paid no consideration therefor both and each of said two several tracts of land except said county roads, streets, railroads, cemetery and town lots and portions so sold by said Dwight W. Grover and Samuel Rosener as aforesaid and by assignment bearing date on said seventh day of March, 1889, and recorded in the office of said Recorder in Book B of Assignments of Mortgages at page 306 on said third day of June, 1889, said Dwight W. Grover and Samuel Rosener further assigned to said Thomas Bell all their right, title and interest to and in the four then still unsatisfied of said six mortgages so taken to secure deferred payments for said small portions so sold by said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin of said first above-described of said two several tracts of land as aforesaid and thereupon by two satisfactions each bearing date on the eleventh day of March, 1889, and each recorded in the office of said Recorder in Book D of Satisfactions of Mortgages at page 237 on said third day of June, 1889, said Thomas Bell satisfied both and each of said mortgages so made, executed and delivered to said Thomas Bell to secure the payment of said eight promissory notes as aforesaid and on said third day of June, 1889, dismissed both and each of said actions and on the 20th of June, 1889, cancelled and delivered to said Dwight W. Grover by the hands of said defendant George Staacke all and every of said promissory notes.

25. That said grant by said Dwight W. Grover and

Samuel Rosener to said defendant George Staacke was not made, executed or delivered to said George Staacke or received by said George Staacke pursuant to any oral or other agreement between said Thomas Bell and said John S. Bell or pursuant to any intent or with any purpose on their part or on the part of either of them or on the part of Dwight W. Grover and Samuel Rosener or either of them that said first above-described of said two several tracts of land or any part or parts thereof should be conveyed to said John S. Bell by being first deeded and conveyed by said Dwight W. Grover and Samuel Rosener to said defendant George Staacke and then by said defendant George Staacke to said John S. Bell, nor did said defendant George Staacke accept or receive said grant in trust to convey said first above-described of said two several tracts of land or any part thereof to said John S. Bell, nor did said defendant George Staacke then or at any other time have notice of any such oral or other agreement or of any such intent or purpose as aforesaid, but on the contrary said Thomas Bell with the knowledge, consent and acquiescence of said John S. Bell requested said Dwight W. Grover and Samuel Rosener to make, execute and deliver said grant to said defendant George Staacke and requested said defendant George Staacke to receive and accept the same with the intent and purpose on the part of both said Thomas Bell and said John S. Bell that said defendant George Staacke should hold the legal title to the lands thereby conveyed for said Thomas Bell, who should possess, manage, administer and control the disposition of said second above-described of said two several tracts of land as his own forever and should also possess, manage, administer and control as his own said first above described of said two several tracts of land with the exceptions aforesaid until the same should be sold, to the end and in order that from the rents, issues and profits to be collected and received by said Thomas Bell from said first above-described of said two several tracts of land with the exceptions aforesaid and credited to said John S. Bell and from the price for

which the same should be sold all present and future indebtedness of said John S. Bell to said Thomas Bell should be repaid to said Thomas Bell in all respects as provided by said agreement between said Thomas Bell and John S. Bell so made and executed between them on the 27th day of August, 1887, as aforesaid with regard to the notes and mortgages therein mentioned and said Dwight W. Grover and Samuel Rosener executed and delivered said grant and said defendant George Saacke received and accepted the same pursuant to said requests so made with said intent and purpose on the part of both said Thomas Bell and said John S. Bell as aforesaid.

26. That thereupon and pursuant to said intent and purpose and with the knowledge, consent and acquiescence and in the presence of said John S. Bell said Thomas Bell took formal and actual possession in the name of said defendant George Staacke of both of said two several tracts of land with the exceptions aforesaid and held and continued to hold possession of both thereof and to collect and receive and credit to said John S. Bell on account the rents, issues and profits of said first above-described of said two several tracts of land until the death of said Thomas Bell as hereinafter found, in the meantime also crediting to said John S. Bell the amounts of said four unsatisfied mortgages so taken to secure deferred payments for small portions so sold by said Dwight W. Grover and Samuel Rosener as aforesaid of said first above-described of said two several tracts of land, all four of which were satisfied by payment to said Thomas Bell of said amounts thereby secured, but continuing after said 31st day of December, 1888 and until the death of said Thomas Bell as hereinafter found to make further advances of money to said John S. Bell whereby the indebtedness of said John S. Bell to said Thomas Bell was increased notwithstanding said credits and became and was on the 30th day of June, 1889, the sum of \$74,733.29, and on the 31st day of December, 1889, the sum of \$80,936.75, and on the 30th day of June, 1890 the sum of \$86,139.75

and on the 31st day of December, 1890, the sum of \$92,844.99 and on the 31st day of December, 1891 the sum of \$100,863.55.

27. That in the meantime by instrument of quit-claim bearing date on the 18th day of April, 1889 and recorded in the office of said recorder in Book 24 of Deeds at Page 491 on the third day of June, 1889, said Joseph N. H. Irwin quit-claimed to said Samuel Rosener said undivided two-fifths of both of said two several tracts of land excepting said county roads, streets, railroads, cemetery and town lots and by grant bearing date on the 26th day of April, 1889 and recorded in said Recorder's office in Book 24 of Deeds at Page 495 said Samuel Rosener conveyed all interest acquired by him by or through said instrument of quit-claim in said two several tracts of land with the exceptions aforesaid to said defendant George Staacke for the same consideration for which said Dwight W. Grover and Samuel Rosener had already conveyed said two several tracts of land except as aforesaid to said defendant George Staacke and in further confirmation and completion of their conveyance thereof to him.

28. That thereafter by agreement in writing bearing date on the sixth day of June, 1889 and recorded in the office of said Recorder in Book 24 of Deeds at Page 610 on the 22nd day of June, 1889 and as part of the same transaction by which said grant of said two several tracts of land with the exceptions aforesaid was made to said defendant George Staacke by said Dwight W. Grover and Samuel Rosener said defendant George Staacke agreed with said Samuel Rosener to sell to said Samuel Rosener both of said two several tracts of land with the exceptions aforesaid for two hundred and eighty thousand dollars at any time with—one year from said date and thereafter by instrument of quit-claim bearing date on the ninth day of June, 1890 and recorded in the office of said Recorder in Book 27 of Deeds at Page 374 on the 14th day of June, 1890, said Samuel Rosener quit-claimed to said defendant George Staacke said two

several tracts of land as in said agreement described.

29. That on or about the third day of December, 1891, said Thomas Bell notified said John S. Bell by letter that the indebtedness of said John S. Bell to said Thomas Bell had become inconvenient to said Thomas Bell and that said Thomas Bell might be compelled for the purpose of reducing the amount thereof to borrow money from said defendant San Francisco Savings Union upon the security of said first above-described of said two several parcels of land and thereafter for the purpose of removing said doubt whether said second above-described of said two several tracts of land had been effectually conveyed to said Dwight W. Grover by said grant so bearing date on the 23rd day of August, 1887 and recorded in said Recorder's office in Book 15 of Deeds at Page 613 as aforesaid, said Thomas Bell by instrument of quit-claim bearing date on the 28th day of January, 1892 and recorded in said Recorder's office in Book 33 of Deeds at Page 54 on the third day of February, 1892, quit-claimed said second above-described of said two several tracts of land to said defendant George Staacke and thereupon on the first day of February, 1892, said Thomas Bell borrowed for the benefit of said John S. Bell from said defendant San Francisco Savings Union the sum of sixty thousand dollars and credited the same to said John S. Bell on account and thereupon requested and caused said defendant George Staacke to make, execute and deliver to said defendant San Francisco Savings Union therefor the promissory note of said defendant George Staacke bearing date on said first day of February, 1892 whereby said defendant George Staacke promised to pay to said defendant San Francisco Savings Union in United States Gold Coin of the then existing standard on the first day of February, 1893, said principal sum of sixty thousand dollars with interest thereon at the monthly rate of two-thirds of one per cent. payable monthly on the first day of each and every month until payment of said principal, commencing on the day of the

date of said promissory note and agreed that in case of default in the payment of any of the amounts of said principal or interest then such amounts should bear interest from the date of their maturity until the day of payment at the rate of one per cent. per month and as part of the same transaction said Thomas Bell guaranteed in writing endorsed on said promissory note the payment of said principal sum and interest according to the terms of said promissory note with waiver of demand, notice of nonpayment, protest and notice of protest and with privilege to the payee thereof of granting extension of the time of payment of said principal sum and said Thomas Bell further with the acquiescence of said John S. Bell requested and caused said defendant George Staacke to make, execute and deliver to said Henry C. Campbell and to said defendant Thaddeus B. Kent as further security for the payment of said promissory note according to its terms a grant bearing date on said first day of February, 1892 and recorded in the office of said Recorder in Book 33 of Deeds at Page 56 on the third day of February, 1892, whereby said defendant George Staacke conveyed to said Henry C. Campbell and to said defendant Thaddeus B. Kent in joint tenancy and to the survivor of them, their successors and assigns the piece or parcel of land that is situate in the County of Santa Barbara in the State of California, and is part of the premises so conveyed to said defendant George Satacke by said Dwight W. Grover and Samuel Rosener as aforesaid and includes the whole of said second above-described of said two several tracts of land and is bounded and described as follows, to-wit:

Commencing at a post in a deep ravine on the Southerly boundary line of the Rancho de Los Alamos, in said County, being Station No. 2 of County Survey No. 357 made May 31, 1867 for James B. Shaw, from which post Station No. 1 of the official Survey of said Rancho, at the South-east corner thereof, bears South Seventy-seven degrees fifteen minutes (77 deg. 15 min.) East, eighty-five chains seventy-two

links (85.72 ch) distant; and running thence North seventy-eight degrees thirty minutes (78 deg. 30 min.) West, along said Southerly line of said Rancho, one hundred and seventy-nine chains seventy-five links (179.75 ch.), to a post on the South slope of a high mountain range, being Station No. 2 of County Survey No. 358 made for Thomas Bell; thence North two degrees forty-five minutes (2 deg. 45 min.) East, leaving said Southerly boundary line of said Rancho, two hundred and twenty chains eighty-four links (220.84 ch.), to station No. 3 of said County Survey No. 358; thence North four degrees fifty-five minutes (4 deg. 55 min.) East, one hundred and twenty-five chains eighty-four links (128.84 ch.), to a point thence South eighty-nine degrees (89 deg.) West, one hundred and fourteen chains eighty-nine links (114.89 ch.), to the South-east corner of the land of Jose Antonio Estrada, conveyed to him by deed dated August 16, 1867; thence North one degree twenty minutes (1 deg. 20 min.) East, along the Easterly line of said Estrada's land, three hundred and thirty-five chains twenty links (335.20 ch.), to a point on the Northerly boundary line of said Rancho de Los Alamos; thence East, along said Northerly boundary line, thirty-eight chains seventy links (38.70 ch.) to Post A. No. 10 of the Official Survey of said Rancho; thence South, forty (40) chains, to Post A. No. 9 of said Official Survey; thence East, Eighty chains eighty links (80.80 ch.), to Post A. No. 8 of said Official Survey, from which a Live Oak tree twenty-four (24) inches in diameter bears North thirty-five degrees thirty minutes (35 deg. 30 min.), East, one chain eighty-two links (1.82 ch.) distant; thence South, forty (40) chains, to Post A. No. 7 of said Official Survey, being a Live Oak tree; thence East, forty (40) chains, to Post A. No. 6 of said Official Survey, from which a Live Oak tree fourteen (14) inches in diameter bears South, fifty-three (53) links distant; thence South, forty (40) chains, to Post A. No. 5 of said Official Survey, from which a Live Oak tree fifteen (15) inches in diameter bears

North twenty-nine degrees thirty minutes (29 deg. 30 min.) East, fifty-eight (58) links distant; thence North eighty-nine degrees thirty minutes (89 deg. 30 min.) East, forty chains twenty links (40.20 ch.) to Post A. No. 4 of said Official Survey, from which a Live Oak tree ten (10) inches in diameter bears South thirty-eight degrees forty-five minutes (38 deg. 45 min.) West, one chain fifteen links (1.15 ch.) distant; thence South fifty-nine degrees (59 deg.) East, along said Northerly line of said Rancho, one hundred and fifteen (115) chains, to Station No. 4 of said County Survey No. 357; thence South four degrees thirty minutes (4 deg. 30 min.) West, along the line of said Survey, three hundred and seventeen chains ninety links (317.90 ch.), to Station No. 3 of said Survey; and thence South three degrees ten minutes (3 deg. 10 min.) West, two hundred and twenty chains eighty-four links (220.84 ch.) to the point of commencement;

Being that portion of said Rancho de Los Alamos that is laid down and delineated on the Map entitled "Map of the Subdivision of a part of the Rancho de Los Alamos Santa Barbara County, California. The property of D. W. Grover, Samuel Rosener, & J. N. H. Irwin Surveyed by R. R. Harris, Octr. and Nov. 1887," on file in the office of the County Recorder of said County of Santa Barbara, and to which map and the record thereof, special reference is hereby made;

Saving and excepting, however, from said portion of said Rancho so laid down and delineated on said map as aforesaid. Lots numbers twenty-three (23), twenty-eight (28), fifty-one (51), fifty-two (52), and fifty-three (53), and the Catholic and Protestant Cemetery Tracts in Lot number sixty-four (64), all as laid down and delineated on the Map to which reference is above made, and also saving and excepting that portion of said Lot number sixty-four (64) which is laid down and delineated on a map entitled "Map of the Town of Los Alamos situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell September 15th, 1876, W. W. Bagster, Sur-

veyor," filed in the office of the County Recorder of said County of Santa Barbara on the first day of February, 1897 and now of record in Book B of Miscellaneous Records at page 406 therein;

The total acreage of the lands above described being Thirteen thousand two hundred (13,200) acres, more or less. To have and to hold the same as joint tenants and not as tenants in common with right of survivorship as such and to their successors and assigns with authority to them and to said defendant San Francisco Savings Union as party of the third part to said grant and to its successors and assigns to pay without previous notice all taxes, assessments and liens then subsisting or that might thereafter be imposed by National, State, County, City or other authority or that might appear *prima facie* to subsist or be imposed upon said premises to whomsoever assessed excepting such taxes and assessments as might be levied or imposed in accordance with Article XIII of the Constitution of the State of California upon said grant or the money secured thereby and whether so levied or imposed thereon as an interest in the property thereby affected or otherwise, and all or any incumbrances then subsisting or that might thereafter subsist thereon that might in their judgment affect said premises or the purposes of said grant at such time as in their judgment might seem best or in their discretion to contest the payment of any such taxes, assessments, liens or incumbrances and upon the following trusts and confidences, to-wit: upon default in the payment of any principal or interest when due in the manner stipulated in and by said promissory note or upon default in the reimbursement of any amount paid pursuant to the foregoing authority with interest thereon at the rate of one per cent. per month until paid to sell upon demand of said defendant San Francisco Savings Union or its assigns said premises or such part thereof as in their discretion they might find necessary to sell for the accomplishment of the purposes of said grant in the manner following, namely: After first publishing the time and place of such sale with a

description of the property to be sold at least twice a week for three weeks in some newspaper published in the City and County of San Francisco in the State of California and also so publishing any postponement of said sale, to sell on the day of sale so advertised or to which such sale might be postponed either in said City and County of San Francisco or at their discretion in said county of Santa Barbara said piece or parcel of land as a whole or in their discretion in such reasonable parcels or subdivisions as they in their judgment might deem advisable to the highest cash bidder including if such should be the case the holder or holders of said promissory note, their agent or assigns or any member or director of said defendant San Francisco Savings Union, but in case of sale in said City and County of San Francisco after also so publishing the time and place of such sale in a newspaper issued in said county of Santa Barbara, and in any case upon condition that all bids and payments for said property should be made in like gold coin as aforesaid and after due payment made, to deliver to the purchaser or purchasers, his or their heirs or assigns a deed or deeds of the premises so sold and out of the proceeds thereof to pay, first, the expenses of such sale together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars in gold coin which should become due upon any default in any of the payments aforesaid; second, all sums that might have been paid under or in accordance with the provisions of said grant by said defendant San Francisco Savings Union or said Henry C. Campbell and by said defendant Thaddeus B. Kent their successors or assigns or the holders of said promissory note and not reimbursed and that might then be due with whatever interest might have accrued thereon; next, the amount due and unpaid on said promissory note with whatever interest might have accrued thereon and lastly the balance or surplus of such proceeds, if any, to said defendant George Staacke, his heirs or assigns and it was expressly covenanted in and by said grant that in the event of the sale of said premises or

any part thereof and the execution of a deed or deeds therefor under said trusts, then the recitals therein of default and publication of notice of sale and of a demand by said defendant San Francisco Savings Union its successors or assigns that such sale should be made should be conclusive proof of such default and of the due publication of such notice and that the sale was made on due and proper demand by said defendant San Francisco Savings Union its successors or assigns and any such deed or deeds should be effectual and conclusive against said defendant George Staacke, his heirs or assigns and all other persons as to such default publication and demand and the receipt for the purchase money contained in any deed executed to a purchaser as aforesaid should be a sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money according to said trusts.

30. That said John S. Bell had knowledge of the execution of said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent and of the occasion, purpose and terms thereof and of the transaction of which the same formed a part as aforesaid immediately after the execution, delivery and recording of said grant as aforesaid and on or about the tenth day of February, 1892 was informed of all said matters by said Thomas Bell by letter and said John S. Bell thereupon acquiesced in said transaction and in every part thereof with full knowledge of the same including the execution and delivery of said grant and consented thereto and knew of said credit of said sum of Sixty Thousand dollars to himself on account and accepted the same.

31. That at all the time and times hereinabove mentioned said defendant George Staacke knew of the relations between said Thomas Bell and said John S. Bell as the same are hereinabove found and at the time of executing said grant to said Henry C. Campbell and to said defendant Thaddeus B. Kent said defendant George Staacke knew of the authority of said

Thomas Bell to act for said John S. Bell in said transaction of which said grant formed a part and of the acquiescence of said John S. Bell therein and of the consent of said John S. Bell thereto, but said defendant San Francisco Savings Union had not nor did said Henry C. Campbell or said defendant Thaddeus B. Kent have any notice at said time or until about four years thereafter of any interest of said John S. Bell in said piece or parcel of land described in said grant nor did they or any of them have notice or knowledge of any fact or circumstance of such character as to put them or any of them upon inquiry or to require them or any of them to inquire concerning the same nor has said John S. Bell ever been in possession of said land or any part thereof at any time since the conveyance of the same by said Thomas Bell and John S. Bell to said Dwight W. Grover as aforesaid.

32. That notwithstanding said credit of said sum of Sixty Thousand dollars by said Thomas Bell to said John S. Bell on account, the indebtedness of said John S. Bell to said Thomas Bell became and was on the 16th day of October, 1892 the sum of \$52,120.15.

33. That said Thomas Bell died on said 16th day of October, 1892 leaving a last will and testament wherein and whereby he appointed Henry Pichoir, John W. C. Maxwell and said defendant George Staacke the Executors thereof and on the 7th day of November, 1892 Letters Testamentary were duly issued to them accordingly by the Superior Court of the County of San Francisco in the State of California; and thereafter on the 30th day of December 1892 said Henry Pichoir duly resigned his trust as such Executor as aforesaid and by order of said Court was duly discharged from his duties as such Executor on said day; and said John W. C. Maxwell duly resigned his trust as such Executor as aforesaid on the 5th day of August, 1898 and was duly discharged from his duties as such Executor by order of said Court on the 13th day of September, 1898; and the powers of said defendant George Staacke as such Executor as aforesaid were suspended by order of said Court on the

23rd day of March, 1900 and Special Letters of Administration of the Estate of said Thomas Bell were thereupon duly issued out of said Court to the above-named defendant Teresa Bell on said day and thereafter on the third day of May, 1900, the Letters Testamentary so issued to said defendant George Staacke as aforesaid were revoked by order of said Court and Letters of Administration of the Estate of Thomas Bell deceased, with the Will annexed were thereafter on the 19th day of February, 1902 duly issued out of said Court to said defendant Teresa Bell and have not since been revoked but are still in full force and effect.

34. That in the meantime and on the 8th day of March 1893 said John S. Bell commenced an action in this Court against said defendant George Staacke and against the said Executors at that time of the last will and testament of Thomas Bell, deceased, wherein and whereby he claimed to be the owner in equity of said tract of land containing about ten thousand acres and demanded judgment that said defendant George Staacke convey the same as holder of the naked legal title thereto for that purpose to said John S. Bell; and thereafter and pending said action, by instrument in writing bearing date on the 22nd day of December, 1896 and recorded in said Recorder's office on the 31st day of December, 1896 in Book 59 of Deeds at Page 33 said John S. Bell freely and acting under no mistake, misapprehension, undue influence, oppression or unfair advantage taken by any one of his necessities or distress and said defendant George Staacke freely and not in pursuance or by authority or direction of any judgment, whether valid or invalid agreed with said defendant San Francisco Savings Union that the time for payment of the principal of said promissory note of said defendant George Staacke should be extended until the 22nd day of December, 1898 and that the security therefor created by said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent should be and remain a first charge on said piece or parcel of land in said grant described, and thereafter by grant bearing

date on said 22nd day of December, 1896, but actually made, executed and delivered on the sixth day of January, 1897, and recorded in the office of said Recorder on the 18th day of June, 1897 in Book 59 of Deeds at Page 579 said John S. Bell for a valuable consideration purported to convey both of said two several tracts of land to said plaintiff Kate M. Bell and by grant bearing date on the 12th day of June, 1897 and recorded in said Recorder's office on the 18th day of June, 1897 in Book 59 of Deeds at Page 582 said plaintiff Kate M. Bell and said John S. Bell purported to convey an undivided half of both of said two several tracts of land with the exceptions aforesaid to said plaintiff James L. Crittenden and to Sidney M. Van Wyck, Jr., both of whom had full actual knowledge of said agreement so recorded in said Recorder's office in Book 59 of Deeds at Page 33 as aforesaid and by grant bearing date on the 7th day of March, 1899 and recorded in said Recorder's office on the 26th day of November, 1900 in Book 75 of Deeds at Page 223 said Sidney M. Van Wyck, Jr., conveyed to said plaintiff James L. Crittenden all his right, title and interest to or in both of said two several tracts of land with the exceptions aforesaid, and thereafter by grant bearing date on the 18th day of September, 1902, and recorded in said Recorder's office in Book 84 of Deeds at Page 253 on the 26th day of September, 1902, said plaintiff James L. Crittenden and Nina D. Crittenden, his wife, purported to convey to said defendant to said cross-complaint U. S. Oil & Land Company said undivided one half of said first above described of said two several tracts of land with the exceptions aforesaid but no taxes upon said two several tracts of land or either of them or any part thereof have ever been paid by said plaintiffs Kate M. Bell and James L. Crittenden or either of them or by said Sidney M. Van Wyck, Jr., or by said defendant to cross-complaint U. S. Oil & Land Company since said 22nd day of December, 1896 nor did said plaintiff Kate M. Bell ever enter into possession of any part of either of said two several tracts of land until long after said

sixth day of January, 1897.

35. That on the 27th day of April, 1893 and within the time allowed by law for that purpose, said defendant San Francisco Savings Union duly presented to said executors at that time of the last will and testament of said Thomas Bell, deceased, George Staacke and John W. C. Maxwell its duly verified claim against the estate of said Thomas Bell, deceased, founded on said promissory note and said guaranty of the payment thereof by said Thomas Bell, stating the same to be secured by said grant in trust to said Henry C. Campbell and said defendant Thaddeus B. Kent and claiming the right to enforce the payment of said claim in the manner stipulated in said grant describing said grant and referring to the date, volume and page of its record and said executors endorsed their allowance of said claim thereon on said day and the same was on the 17th day of May, 1893 further allowed and approved by a Judge of said Superior Court of the County of San Francisco in manner and form as required by law.

36. That in and by said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent in trust as aforesaid, it was further expressly covenanted that said defendant San Francisco Savings Union might by resolution of its Board of Directors from time to time appoint another Trustee or trustees to execute the trusts thereby created and upon such appointment and a conveyance by said grantees the survivor of them, their successors or assigns, to such appointee or appointees, such appointee or appointees should be vested with all the title, interest, powers, duties and trusts in the premises vested by said grant in said grantees or thereby conferred upon the same and such appointees or new trustees should be considered the successors and assigns of said grantees and by resolution of said Board of Directors of said defendant San Francisco Savings Union duly adopted by said Board of Directors at a regular meeting thereof held on the 24th day of February, 1898 said defendant San Francisco Savings

Union duly appointed said defendant Edward B. Pond and said Henry C. Campbell trustees to execute the trusts created by said grant bearing date on the first day of February, 1902 and recorded in said Recorder's office in Liber 33 of Deeds at Page 56 on the third day of February, 1902 as aforesaid and thereupon by conveyance bearing date on the 28th day of February, 1898 and recorded in said Recorder's office in Book 61 of Deeds at Page 408 on the fourth day of March, 1898 said Henry C. Campbell and said defendant Thaddeus B. Kent vested said Henry C. Campbell and said defendant Edward B. Pond with all the title, interest, powers, duties and trusts in the premises by said grant vested in the grantees therein named or conferred upon them and said Henry C. Campbell and said defendant Edward B. Pond became entitled to be considered the successors and assigns of said grantees so named in said grant within the meaning thereof and by further resolution of said Board of Directors adopted by said Board of Directors at a regular meeting thereof held on the first day of November, 1900, said defendant San Francisco Savings Union further duly appointed said defendant Mercantile Trust Company of San Francisco trustee to execute said trusts and thereupon by conveyance bearing date on the fifth day of November, 1900 and recorded in the office of said Recorder in Book 75 of Deeds at page 154 on the 13th day of November, 1900, said Henry C. Campbell and said defendant Edward B. Pond vested said defendant Mercantile Trust Company of San Francisco with all said title, interests, powers, duties and trusts and said defendant Mercantile Trust Company of San Francisco thereby became entitled to be considered and ever since has been and now is the successor and assign of said grantees to named in said grant within the meaning thereof.

37. That the principal of said promissory note of said defendant George Staacke has not been paid nor has any part thereof been paid and no interest has been paid thereon except the interest thereon to the first day of November, 1896 and said defendant San Fran-

cisco Savings Union has paid taxes under and pursuant to said authorization for that purpose contained in said grant in trust by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent upon the following dates, for the following years, to the following amounts upon the following premises, to-wit:

(a) Upon so much of said piece or parcel of land so described in said grant in trust as does not include said second above-described of said two several tracts of land.

July 7, 1898, Taxes of 1897.....	435.94
May 31, 1899, Taxes of 1898.....	227.92
June 14, 1900, Taxes of 1899.....	518.68
April 4, 1904, Taxes of 1900, 1901, 1902.....	3645.58
July 14, 1904, Taxes of 1903.....	1201.55

Total.....	\$6029.67
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(b) Upon said second above-described of said two several tracts of land.

July 7, 1898, Taxes of 1897.....	173.30
May 31, 1899, Taxes of 1898.....	13.12

Forward.....	\$186.42
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Brought Forward.....	\$186.42
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June 14, 1900, Taxes of 1899.....	29.87
June 26, 1901, Taxes of 1900.....	192.88
June 26, 1902, Taxes of 1901.....	153.94
June 22, 1903, Taxes of 1902.....	185.29
April 4, 1904, Taxes of 1903.....	321.61

Total.....	\$1070.01
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and the amount due to said defendant San Francisco Savings Union including interest to the date of this decision on said promissory note is the sum of \$148,-052 52-100 and on said taxes the total whereof is \$6,029.67 as aforesaid is the sum of \$6583 86-100 and on said taxes the total whereof is \$1,070.01 as aforesaid is the sum of \$1168 29-100, making an aggregate total of the sum of One hundred and fifty-five Thousand

eight hundred and four 67-100 dollars, no part whereof has been reimbursed.

38. That said defendant San Francisco Savings Union has duly demanded of said defendant Mercantile Trust Company of San Francisco the sale of said piece or parcel of land so described in said grant in trust as aforesaid and the execution thereby and thereupon of the trusts in said grant contained.

39. That it was never understood or agreed by or between said defendants San Francisco Savings Union and George Staacke that in case said defendant San Francisco Savings Union should have to resort to sale of said piece or parcel of land so described in said grant in trust as aforesaid for the payment of said principal or interest of said promissory note of said defendant George Staacke, said first above-described of said two several tracts of land or any part thereof should be first sold or that said second above-described of said two tracts of land should not be sold unless there was a deficiency still due said defendant San Francisco Savings Union after the sale of said first above-described of said two several tracts of land.

40. That said action so commenced on the 8th day of March, 1893 by said John S. Bell against said defendant George Staacke and said executors at that time of the last Will and Testament of Thomas Bell, deceased, is still pending in this Court and is numbered 2826 in the Register of Actions and Proceedings in the office of the Clerk of this Court and the relations between said John S. Bell and his grantees of said first above-described of said two several tracts of land on the one hand and said defendants George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the will annexed, on the other hand in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect of said first above-described of said two several tracts of land and all or any parts thereof are involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein.

CONCLUSIONS OF LAW.

1. That said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco are entitled to judgment herein that said plaintiffs Kate M. Bell and James L. Crittenden and said defendant to cross-complaint U. S. Oil & Land Company take nothing by this action and that said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, take nothing by this action except as hereinafter adjudged.

2. That said defendant Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco are entitled to judgment herein that said Henry C. Campbell did not have at the time of his death and said defendants Edward B. Pond and Thaddeus B. Kent have not nor has either of them any interest in said two several tracts of land or in either of them or in any part thereof or any duties or duty with respect thereto.

3. That said defendant San Francisco Savings Union, George Staacke and Mercantile Trust Company of San Francisco are entitled to judgment herein that said grant in trust by said defendant George Staacke to said Henry C. Campbell and said Thaddeus B. Kent is a good and valid grant of the piece or parcel of land therein described upon the trusts therein mentioned, whereof said defendant Mercantile Trust Company of San Francisco is now the trustee and that this Court having been vested by this action with jurisdiction with respect to said two several tracts of land for the purposes of determining the issues raised herein by the complaint of said plaintiff and the answers thereto retain said jurisdiction for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land and for that purpose take under its direction and control the execution by said defendant Mercantile Trust Company of San Francisco of the trusts created by

said grant so recorded in the office of said Recorder of the County of Santa Barbara in the State of California in Book 33 of Deeds at Page 56 as aforesaid and direct, instruct and supervise said defendant Mercantile Trust Company of San Francisco in executing said trusts in accordance with this decision and ratify and confirm by its orders the execution thereof by said defendant Mercantile Trust Company of San Francisco in accordance with this decision to the end that the title of any purchaser of said two tracts of land or of either of them or of any part thereof from said defendant Mercantile Trust Company of San Francisco may be quieted in this action against any and all claims of the parties hereto or of any of them.

4. That said defendant Teresa Bell as Administratrix of the estate of Thomas Bell, deceased, with the Will annexed, is entitled to Judgment herein that so much of said piece or parcel of land described in said grant in trust as does not include said second above-described of said two several tracts of land be first sold by said defendant Mercantile Trust Company of San Francisco in the execution of said trusts to the end that to the extent of the proceeds thereof the amount of said promissory note and interest may be paid out of said proceeds but said defendant Teresa Bell as Administratrix of the estate of Thomas Bell, deceased, with the will annexed, is entitled to no other judgment herein.

5. That said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco are entitled to recover from said plaintiffs Kate M. Bell and James L. Crittenden and said defendant to cross-complaint U. S. Oil & Land Company their costs in this action incurred.

Dated Santa Barbara, California, March 14th, 1905.

J. W. Taggart,

Judge of the Superior Court.

Filed March 14th, 1905. C. A. Hunt, Clerk.

That the judgment and decree in said action No.

4424, so made and filed as aforesaid, on the 14th day of March, 1905, was as plaintiff is informed and believes, thereafter duly entered in said Superior Court, and is in the words and figures following, to wit:

In the Superior Court of the County of Santa Barbara,
State of California.

Kate M. Bell and James L. Crittenden, Plaintiffs,
vs.

San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell, as Guardian of the Persons and Estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco, defendants.

U. S. Oil & Land Company, Defendant to cross-complaint.

JUDGMENT.

Upon the pleadings and all the other papers heretofore filed and all the proceedings heretofore had in the above entitled action and in particular upon the decision of this Court this day given and filed herein and on motion of Canfield & Starbuck, Esqs., attorneys herein for the above-named defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco, it is hereby

Adjudged that the above-named plaintiffs Kate M. Bell and James L. Crittenden and the above-named defendant to cross-complaint U. S. Oil & Land Company jointly and severally take nothing by this action and that the above-named defendant Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, take nothing by this action except as hereinafter adjudged.

And it is hereby further adjudged that Henry C.

Campbell, formerly a party defendant to this action but now deceased, had not at the time of his death and that the said defendants Edward B. Pond and Thaddeus B. Kent have not nor has either of them any interest in this action or the subject matter thereof or any duty or duties with respect to this action or to said subject matter thereof.

And it is hereby further adjudged that the grant made, executed and delivered by said defendant George Staacke to said Henry C. Campbell and to said defendant Thaddeus B. Kent, bearing date on the first day of February, 1892 and recorded in the office of the Recorder of the County of Santa Barbara in the State of California in Book 33 of Deeds at page 56 on the third day of February, 1892 is a good and valid grant of the piece or parcel of land herein described upon the trusts therein mentioned, whereof said defendant Mercantile Trust Company of San Francisco is now the sole trustee and that said trusts are enforceable herein and the enforcement thereof is not barred by any statute of limitations of this State.

And it is hereby further adjudged that said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute said trusts and for that purpose to publish at least twice a week for three weeks in the Daily Journal of Commerce, a newspaper published in the City and County of San Francisco in the State of California and also in the Independent, a newspaper published in the City of Santa Barbara in the County of Santa Barabara in said State a notice of the time of a sale of the piece or parcel of land in said grant described at public auction to the highest cash bidder in gold coin of the United States of the Standard of 1892 in front of the Court house in said city of Santa Barbara in two several tracts which shall be described in said notice as follows, to-wit: First. All that certain lot, piece or parcel of land containing about 9,200 acres situate in the County of Santa Barbara in the State of California and bounded and described as follows:

Commencing at a post in a deep ravine on the

Southerly boundary line of the Rancho de Los Alamos, in said County, being Station No. 2 of County Survey No. 357 made May 31, 1867 for James B. Shaw, from which post Station No. 1 of the Official Survey of said Rancho, at the South-east corner thereof, bears South Seventy-seven degrees fifteen minutes (77 deg. 15 min.) East, eighty-five chains seventy-two links (85.72 ch.) distant; and running thence North seventy-eight degrees thirty minutes (78 deg. 30 min.) West, along said Southerly line of said Rancho one hundred and seventy-nine chains seventy-five links (179.75 ch.), to a post on the South slope of a high mountain range, being Station No. 2 of County Survey No. 358 made for Thomas Bell; thence North two degrees forty-five minutes (2 deg. 45 min.) East, leaving said Southerly boundary line of said Rancho, two hundred and twenty chains eighty-four links (220.84 ch.); to station No. 3 of said County Survey No. 358; thence North four degrees fifty-five minutes (4 deg. 55 min.) East, one hundred and twenty-five chains eighty-four links (128.84 ch.), to a point thence South eighty-nine degrees (89 deg.) West, one hundred and fourteen chains eighty-nine links (114.89 ch.), to the South-east corner of the land of Jose Antonio Estrada, conveyed to him by deed dated August 16, 1867; thence North one degree twenty minutes (1 deg. 20 min.) East, along the Easterly line of said Estrada's land, three hundred and thirty-five chains twenty links (335.20 ch.), to a point on the Northerly boundary line of said Rancho de Los Alamos; thence East, along said Northerly boundary line, thirty-eight chains seventy links (38.70 ch.), to Post A. No. 10 of the Official Survey of said Rancho; thence South, forty (40) chains, to Post A. No. 9 of said Official Survey; thence East, Eighty chains eighty links (80.80 ch.), to Post A. No. 8 of said Official Survey, from which a Live Oak tree twenty-four (24) inches in diameter bears North thirty-five degrees thirty minutes (35 deg. 30 min.), East, one chain eighty-two links (1.82 ch.) distant; thence South, forty (40) chains, to Post A. No. 7 of

said Official Survey, being a Live Oak tree; thence East, forty (40) chains, to Post A. No. 6 of said Official Survey, from which a Live Oak tree fourteen (14) inches in diameter bears South fifty-three (53) links distant; thence South, forty (40) chains, to Post A. No. 5 of said Official Survey, from which a Live Oak tree fifteen (15) inches in diameter bears North twenty-nine degrees thirty minutes (29 deg. 30 min.) East, fifty-eight (58) links distant; thence North eighty-nine degrees thirty minutes (89 deg. 30 min.) East, forty chains twenty links (40.20 ch.) to Post A. No. 4 of said Official Survey, from which a Live Oak tree ten (10) inches in diameter bears South thirty-eight degrees forty-five minutes (38 deg. 45 min.) West, one chain fifteen links (1.15 ch.) distant; thence South fifty-nine degrees (59 deg.) East, along said Northerly line of said Rancho, one hundred and fifteen (115) chains, to Station No. 4 of said County Survey No. 357; thence South four degrees thirty minutes (4 deg. 30 min.) West, along the line of said Survey, three hundred and seventeen chains ninety links (317.90 ch.), to Station No. 3 of said Survey; and thence South three degrees ten minutes (3 deg. 10 min.) West, two hundred and twenty chains eighty-four links (220.84 ch.), to the point of commencement;

Being that portion of said Rancho de Los Alamos that is laid down and delineated on the Map entitled "Map of the Subdivision of a part of the Rancho de Los Alamos, Santa Barbara County, California. The property of D. W. Grover, Samuel Rosener & J. N. H. Irwin. Surveyed by R. R. Harris, Octr. and Nov. 1887," on file in the office of the County Recorder of said County of Santa Barbara, and to which map and the record thereof, special reference is hereby made.

Saving and excepting, however, from said portion of said Rancho so laid down and delineated on said map as aforesaid. Lots numbers twenty-three (23), twenty-eight (28), fifty-one (51), fifty-two (52) and fifty-three (53), and the Catholic and Protestant Cemetery Tracts in Lot number sixty-four (64), all

as laid down and delineated on the Map to which reference is above made, and also saving and excepting that portion of said Lot number sixty-four (64) which is laid down and delineated on a Map entitled "Map of the Town of Los Alamos situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell September 15th, 1876, W. W. Bagster, Surveyor", filed in the office of the County Recorder of said County of Santa Barbara on the first day of February, 1879, and now of record in Book B of Miscellaneous Records at page 406 therein;

And also saving and excepting all that certain lot, piece or parcel of land containing about 4000 acres situated in the County of Santa Barbara in the State of California and bounded and particularly described as follows, to-wit: Commencing at the Southeast corner of the land of Jose Antonio Estrada which was conveyed to him by deed dated August sixteenth, 1867, thence running due East to land conveyed by Jose Antonio de la Guerra to Thomas Bell by deed bearing date on the 26th day of June, 1867; thence along the western boundary of last mentioned land of Thomas Bell to its intersection with the Northern boundary line of the Rancho de Los Alamos; thence west along the said Northern boundary line to the lands of Jose Antonio Estrada as conveyed to him by the said deed of August 16th, 1867; thence South along the Eastern boundary line of said Estrada's land to place of beginning.

Second. All that certain lot, piece or parcel of land containing about 4,000 acres situated in the County of Santa Barbara, in the State of California and bounded and particularly described as follows, to-wit: Commencing at the Southeast corner of the land of Jose Antonio Estrada which was conveyed to him by deed dated August sixteenth, 1867, thence running due East to land conveyed by Jose Antonio de la Guerra to Thomas Bell by Deed bearing date on the 26th day of June, 1867; thence South along the Eastern boundary of last mentioned land of Thomas Bell to its intersection with the Northern boundary

line of the Rancho de Los Alamos; thence west along the said Northern boundary line to the lands of Jose Antonio Estrada as conveyed to him by said deed of August 16th 1867; thence South along the Eastern boundary line of said Estrada's land to place of beginning; with authority which is hereby adjudged to be vested in said defendant Mercantile Trust Company of San Francisco to postpone said sale from time to time by publication in said newspapers and in both and each of them.

And it is hereby further adjudged that for the purpose of further executing said trusts said defendant Mercantile Trust Company of San Francisco be and hereby is further ordered and directed to sell at said time of sale mentioned in said notice or at the time to which said sale may have been postponed as the case may be, and pursuant to the terms of said notice the first above-described of said two several tracts of land and in case the highest amount bid therefor shall not be sufficient to pay the expenses of said sale together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars and the just and full sum of one hundred and fifty-five thousand eight hundred and four 67-100 dollars with interest thereon from the date hereof, then and in that case but not otherwise to sell at said time and place and pursuant to said terms of said notice the second above-described of said two several tracts of land and in either case thereupon to report its proceedings to this Court and upon confirmation of said sale or sales as the case may be by order of this Court to be entered upon said report, to make and execute and upon payment of the amounts bid for the same respectively to deliver to the purchaser or purchasers, his or their heirs and assigns, a grant or grants of the said tract or tracts of land so sold as aforesaid.

And it is hereby further adjudged that the recitals in said grant or grants so to be delivered by said defendant Mercantile Trust Company of San Francisco as aforesaid of default in the payment or payments mentioned in said grant in trust and of publication

of notice of sale and of a demand by said defendant San Francisco Savings Union, its successors or assigns, that such sale should be made shall be conclusive proof of such default and of the due publication of such notice and that the sale was made on due and proper demand by said defendant San Francisco Savings Union, its successors or assigns, and any such grant or grants so delivered by said defendant Mercantile Trust Company of San Francisco as aforesaid with such recitals therein shall be effectual and conclusive against the said defendant George Staacke, his heirs or assigns, and all other persons as to such default, publication and demand and the receipt for the purchase money contained in any said grant or grants so executed and delivered to a purchaser or purchasers by said defendant Mercantile Trust Company of San Francisco as aforesaid shall be a sufficient discharge or discharges to such purchaser or purchasers from all obligations to see to the proper application of the purchase money according to the trusts aforesaid.

And it is hereby further adjudged that for the purpose of further executing said trusts said defendant Mercantile Trust Company of San Francisco be and hereby is further ordered and directed to pay out of the proceeds of said sale or sales as the case may be, first, the expenses of said sale or sales, together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars in gold coin, and second, to the said defendant San Francisco Savings Union the just and full sum of seven thousand seven hundred and fifty-two 15-100 dollars with interest thereon from the date hereof and next to said defendant San Francisco Savings Union the just and full sum of One hundred and forty-eight Thousand and fifty-two 52-100 dollars (\$148052 52-100) with interest thereon from the date hereof, and lastly the balance of said proceeds if any, to said defendant George Staacke, his heirs or assigns, and thereupon to report its proceedings to this Court upon confirmation whereof by order of this Court thereupon to be duly entered

herein said defendant Mercantile Trust Company of San Francisco shall be discharged from all liability as such Trustee as aforesaid.

And it is hereby further adjudged that said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco recover from said plaintiffs Kate M. Bell and James L. Crittenden and from said defendant to cross-complaint U. S. Oil & Land Company the sum of dollars, their costs in this action incurred.

Dated Santa Barbara, California, March 14th, 1905.

J. W. Taggart,

Judge of the Superior Court.

Filed March 14th, 1905. C. A. Hunt, Clerk.

Your orator, further complaining shows, avers and alleges that on the eighth day of September, 1905, the said U. S. Oil & Land Company and James L. Crittenden, by notice of appeal and by giving the undertaking required by law, duly appealed from the judgment in said action No. 4424 to the Supreme Court of the State of California; that thereafter and on the tenth day of April, 1906, said U. S. Oil & Land Company and said James L. Crittenden by written notice of appeal and by giving the undertaking required by law duly took and perfected an appeal to the said supreme court from an order made in said action No. 4424 denying their motion for a new trial; that the said Teresa Bell, as such administratrix, also took and perfected an appeal from said judgment in said action No. 4424 to said Supreme Court; that such proceedings were thereafter duly had on said appeals that said judgment and order denying a new trial in said action No. 4424 were duly affirmed on the 14th day of February, 1908, and that said decree so affirmed has ever since been and now is in full force.

11th. Your orator further complaining, shows, avers and alleges on information and belief that the value of the said tract, piece and parcel of land, consisting of 10,067.2 acres has greatly increased by reason of the discovery of oil therein and in the adjoin-

ing lands, and that the said 10,067.2 acres of land is now of the value of at least three millions (\$3,000,000.00) dollars; that the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, has voluntarily paid to the Mercantile Trust Company of San Francisco, and to said San Francisco Savings Union \$179,411.40, the full amount due said San Francisco Savings Union on its claim against said estate of Thomas Bell, deceased, as adjudged and decreed in and by said judgment in the said action No. 4424; that on the 16th day of June, 1908, the said Teresa Bell, as such administratrix, by her attorney, T. Z. Blakeman, Esq., and said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco by their attorneys, Canfield & Starbuck, Esq., made and filed in said Superior Court in said action No. 4424 a written stipulation stating and declaring that the total amount due to said San Francisco Savings Union was \$179,411.40 and that said amount had been paid to the said San Francisco Savings Union by the said Teresa Bell as such administratrix, without any sale of the lands in said judgment described, and that it was therefore, stipulated, that the said judgment in said action No. 4424 be and was satisfied, and that the Clerk of the said Superior Court was directed to enter satisfaction of said judgment; that said payment so made as aforesaid by said Teresa Bell as such administratrix, was made with the intent, object and design of depriving the complainant of its right and interest of, in and to said undivided one-half of 10,067.2 acres of land, and of its right, interest and equity in and to such portion of the proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said action No. 4424; that with such intent, purpose, object and design, and to obtain an unfair and unconscionable advantage over this complainant the said Teresa Bell upon making said payment of \$179,411.40,

obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union an instrument in writing purporting and pretending to grant, bargain, sell and convey said 10,067.2 acres of land with the exception of those pieces and parcels excepted therefrom by and in said judgment to said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased; that the making and execution of the conveyance or instrument to said Teresa Bell as such administratrix by said Mercantile Trust Company of San Francisco and by said San Francisco Savings Union hereinabove mentioned in this paragraph, was contrary to and in violation of said judgment in said action No. 4424, of the provisions of said judgment, and of the trust therein adjudged and declared, and was wrongful, fraudulent and unlawful and in violation of the rights and interests of the U. S. Oil & Land Company under said Judgment and decree in said action No. 4424 and under said judgment dated June 29th, 1901; that said pretended deed and conveyance so obtained as aforesaid by said Teresa Bell as such administratrix from said Mercantile Trust Company of San Francisco and said San Francisco Savings Union was dated May 26th, 1908, and was recorded at the request of said Teresa Bell as such administratrix on the 15th day of June, 1908, by the County Recorder of Santa Barbara County in Book of Deeds No. 118 on the pages 585 to 589 thereof; that one of the considerations for the making and execution of said pretended deed and conveyance of May 26th, 1908 to said Teresa Bell as such administratrix, as stated in said pretended deed, was the payment of the sum due and payable to said San Francisco Savings Union under and by virtue of said judgment in said action No. 4424; that said pretended sale and transfer by said Mercantile Trust Company of San Francisco was made under and in pursuance of a combination and conspiracy entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell with the wrongful, unlawful and fraudulent intent, object, purpose and de-

sign to defraud the said U. S. Oil & Land Company out of its right, title and interest in said 10,067.2 acres of land and out of its right, title and interest in and to the proceeds of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, and also to evade and defeat the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, and that said pretended sale and transfer was made secretly without any notice whatever thereof or of any proposed sale being given or published in any newspaper and without any notice whatever being given to said U. S. Oil & Land Company in pursuance and execution of the said combination and conspiracy and with the fraudulent intents, objects, purposes and designs aforesaid; that the said Teresa Bell, Mercantile Trust Company and San Francisco Savings Union knew and each of them knew at the time of the said pretended sale and transfer, and of the payment of said sum of \$179,411.40 that said tract of land of 10,067.2 acres was worth and of the value of at least \$500,000.00 and that the development of oil near or adjoining said lands made them prospectively worth at least one million of dollars or more; that said pretended sale and transfer was a fraud upon your orator and contrary to and in violation of said decree in said action No. 4424; that the defendants in this action wrongfully and unlawfully claim and assert that the said pretended deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell, as such administratrix, the title of, in and to said tract of land consisting of 10,067.2 acres, including any and all rights, title and interest of said U. S. Oil & Land Company, the complainant in this action; that said claim so made as aforesaid by said defendants as to said pretended deed and conveyance of May 26th, 1908, is without merit, wrongful and unlawful, contrary to and in conflict with said judgment in the said action No. 4424, and a fraud upon this complainant, and was and is made

with the wrongful, fraudulent and unlawful intents, purposes and designs aforesaid and of defrauding the said U. S. Oil & Land Company and its successors and grantees out of its interest in and title to an undivided one-half of the said 10,067.2 acres of land; that said 10,067.2 acres of land has never been advertised for sale by said Mercantile Trust Company of San Francisco as required in and by said decree in said action No. 4424 or otherwise or at all; that said pretended deed and conveyance and the pretended sale and transfer of said tract of 10,067.2 acres of land to said Teresa Bell as administratrix, etc. by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has never been reported or submitted to or approved or confined by said Superior Court of Santa Barbara County; that said Mercantile Trust Company of San Francisco has wholly failed and neglected to perform its duties as trustee under said decree in said action No. 4424 and has, as hereinabove alleged, attempted to transfer and dispose of said trust property, the said tract of 10,067.2 acres of land, contrary to and in violation of the trust declared and set forth in said decree in said action No. 4424, and with the wrongful, unlawful and fraudulent intents, objects, purposes and designs aforesaid; that the said George Staacke had no personal interest or right or title in or to any of the proceeds of the sale of said tract of 10,067.2 acres of land adjudged to be made under and in pursuance of said decree in said action No. 4424, and his heirs, assigns and executor have no other different or greater right, title or interest in or to any such proceeds than said George Staacke had under said decree; that said George Staacke had no other right, title or interest whatever in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of trustee for the benefit of the U. S. Oil & Land Company, its successors and assigns;

That on or about the 3rd day of March, 1911, the San Luis Land and Improvement Company, a corporation, for a valuable consideration sold, granted, trans-

ferred and conveyed in fee simple to the complainant, the U. S. Oil & Land Company, by a good and sufficient deed and conveyance an undivided one-half of said 10,067.2 acres and tract of land hereinabove described, and said deed was thereafter and on the Fifth day of March, 1911 duly filed for record and recorded in the office of the County Recorder in said County of Santa Barbara in Book of Deeds No. 131 on pages 109 to 110 thereof; that said John S. Bell on the 22nd day of December, 1896 for a valuable consideration granted, bargained, sold and conveyed to Catherine M. Bell, his wife, one of the defendants above named, said tract or piece of land of 10,067.2 acres, in fee simple absolute, and made, executed and delivered to her a good and sufficient grant, bargained and sale deed granting, transferring and conveying for a valuable consideration to said Catherine M. Bell, known also as Kate M. Bell, said 10,067.2 acres and tract of land; that said deed of John S. Bell to Catherine M. Bell was dated the 22nd day of December 1896 and was recorded in the office of the County Recorder of Santa Barbara County on the 18th day of June 1897 in Book 59 of Deeds at page 579; that said John S. Bell and Catherine M. Bell did on the 12th day of June 1897 for a valuable consideration grant, bargain, sell and convey in fee simple absolute to James L. Crittenden and Sidney M. Van Wyck, Jr. an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, and did make, execute, acknowledge and deliver to said James L. Crittenden and Sidney M. Van Wyck, Jr. a good and sufficient grant, bargain and sale deed and conveyance wherein and whereby they, said John S. Bell and Catherine M. Bell, did grant, bargain and sell and convey for a valuable consideration to said James L. Crittenden and Sidney M. Van Wyck, Jr. and to their heirs and assigns an undivided one-half of said tract or piece of land of 10,067.2 acres; that said deed from said John S. Bell and Kate M. Bell to said James L. Crittenden and Sidney M. Van Wyck, Jr. was dated the 12th day of June 1897 and

was duly recorded in the office of the County Recorder of Santa Barbara County, State of California on the 18th day of June 1897 in Book 59 of Deeds at page 582; that on the 7th day of March 1899 for a valuable consideration by a good and sufficient grant, bargain and sale deed and conveyance said Sidney M. Van Wyck, Jr. granted, bargained sold and conveyed in fee simple to said James L. Crittenden and to his heirs and assigns forever all his right, title and interest of, in and to said tract or piece of land of 10,067.2 acres, and that said deed was dated March 7th 1899 and recorded in said Recorder's Office in Santa Barbara County on the 26th day of November 1900 in Book 75 of Deeds at page 223; that the said deeds and conveyances so executed and recorded as aforesaid, by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company, and San Luis Land and Improvement Company, each granted and conveyed an undivided one-half of all of that certain tract, piece and parcel of land consisting of 10,067.2 acres described hereinabove in Paragraph numbered 1st of this bill of complaint with the exception of the lots, pieces and parcels mentioned in said paragraph 1st as excepted from the 10,067.2 acres tract described therein;

12th. Your orator, further complaining, shows avers and alleges upon information and belief that the Associated Oil Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Associated Transportation Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Union Oil Company of California, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that each and every one of the defendants mentioned in the title

of this bill and complaint is a citizen and resident of the State of California; that your orator, U. S. Oil & Land Company, is a citizen of the State of Arizona; that Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, known also as Elizabeth M. Bell, W. E. Bell known also as Eustace Bell, Reginald Bell, T. M. Bell, Muriel Bell also known as Muriel Margaret Bell, Robina Bell, Katherine M. Bell known also as Kate M. Bell, Marie T. Holman formerly Marie T. Bell, Arthur S. Holman husband of Marie T. Holman, Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auxerais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, J. Doherty, Henry N. Evans, J. S. Evans, Joseph Smith, Joseph Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, M. Dominguez, W. P. Hammon, F. C. Van Deinse, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Union Oil Company of California, The Associated Oil Company, The Associated Transportation Company, Rauers Law and Collection Company, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, defendants, are citizens and residents of the State of California, and that each of said defendants is a citizen and resident of said State of California; that the name of said San Francisco Savings Union has been changed to Savings Union Bank and Trust Company by and under a judgment of the Superior Court of the State of California in and for the City and County of San Francisco duly made, rendered and entered in a proceeding duly commenced and prosecuted by said San Francisco Savings Union and the directors thereof and that a certified copy of said judgment changing the name of said San Francisco Savings Union as

aforesaid has been duly filed with the Secretary of State of the State of California;

13th. Your orator further complaining, shows, avers and alleges that the true names of the defendants designated in the title to this complaint as John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Richard Roe, Henry Roe, Kate Roe and Mary Roe are unknown to the complainant and said persons are therefore designated and sued by said fictitious names in order that they may be brought in as defendants when their names are discovered;

14th. Your orator further complaining, shows, avers, and alleges upon information and belief that said George Henry Howard has made, executed and delivered to O. H. Harsbarger a pretended deed and conveyance purporting to transfer and convey all the right, title and interest of said George Henry Howard in and to said tract, piece and parcel of land of 10,067.2 acres; that said George Henry Howard and O. H. Harsbarger had notice and knowledge at the time of and before said pretended deed and conveyance was made by said Howard to said Harsbarger of the title of complainant to an undivided one-half of said 10,067.2 acres and tract of land and of each and all of the following facts and matters, to-wit: That said tract, piece or parcel of land of 10,067.2 acres had been and was deeded and conveyed by Dwight W. Grover and Samuel Rosener on or about the 7th day of March, 1889, in trust for the benefit of John S. Bell the then owner thereof, and that said Grover and Rosener had on and prior to March 7th, 1889, agreed to reconvey said tract of land to said John S. Bell, and that said George Staacke paid no consideration whatever for said tract, piece or parcel of land of 10,067.2 acres of land or for any part or portion thereof or for said deed and conveyance so as aforesaid executed to him by said Grover and Rosener, and that said George Staacke received and accepted said deed and conveyance and held the title to said 10,067.2

acres of land as such trustee, and not otherwise, from the time he received the same to the time of his death, and that the decrees hereinabove in this complaint mentioned had been made and entered by said Superior Court of Santa Barbara County; that said pretended deed and conveyance so made by said Howard to said Harshbarger was made with the fraudulent and unlawful intent, object, purpose and design to defeat said trust upon which said land had been conveyed as aforesaid by said Grover and Rosener to said George Staacke and to deprive the plaintiff and the successors in interest of John S. Bell of the benefits of said trust and of their rights thereunder;

15th. Your orator further complaining, shows, avers and alleges upon information and belief that the matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of Ten Thousand Dollars and that the real property involved in this suit exceeds in value the sum of One Million Dollars; that the matter in controversy in this suit is between citizens of different states, that is, between the complainant, a citizen of the State of Arizona, and the defendants, who are citizens of the State of California, that each and all of the defendants had notice of said judgments and decrees, and of said findings hereinabove mentioned and set forth, and also of the right, title and interest of the complainant of, in and to an undivided one-half of said tract and piece of land consisting of 10,067.2 acres of land, and had such notice before said defendants or any of them entered upon said tract of land or paid any money or consideration for any right or interest therein or thereto; that the defendants W. P. Hammon and F. C. Van Deinse, did on or about the 1st day of June 1911 wrongfully and unlawfully enter upon a portion of said lands and bore or cause to be bored a well for the purpose of extracting oil from said land with the wrongful and unlawful intent, object, purpose and design to appropriate to their own use or to the use of one of them any and all oil obtained or extracted from said lands to the great and irreparable loss, damage and injury of

the complainant; that said defendants W. P. Hammon and F. C. Van Deinse threaten and are about to bore or cause to be bored other wells with the wrongful and unlawful intent, object, purpose and design of extracting oil from said land and appropriating all oils extracted therefrom to the use of one or both of them and will, unless restrained and enjoined by this honorable court, extract large quantities of oil from said lands, sell the same, and appropriate the proceeds thereof to the use of one or both of said defendants and thereby greatly depreciate the value of said land and greatly and irreparably injure and damage the complainant and the rights, interest and title of complainant in and to said lands; that said Teresa Bell as such administratrix and claiming and asserting wrongfully and unlawfully to have acquired the title in fee to said 10,067.2 acres of land by and under said deed dated May 26th 1908 so as aforesaid made and executed by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has collected large sums of money as rents from the tenants on said tract of land aggregating about \$10,000 to which rents the complainant was and is entitled as the owner in fee of an undivided one-half of said tract of 10,067.2 acres of land; that the said Teresa Bell as such administratrix threatens to collect and appropriate to her own use as such administratrix all the rents, income and profits of said tract of 10,067.2 acres of land and will carry out said threats and collect and appropriate all of said rents, income and profits to her own use as such administratrix to the great and irreparable loss, injury and damage of the complainant unless restrained and enjoined by this honorable court and by an injunction issuing in this suit out of the court commanding her as such administratrix to desist and refrain from collecting the same or the one-half thereof to which the complainant is entitled;

That on or about the 20th day of May 1908 the said Teresa Bell, Mercantile Trust Company of San Francisco and said San Francisco Savings Union combined

and conspired together and made and entered into a secret combination and conspiracy to evade and defeat the said decree in said action No. 4424, and to deprive said U. S. Oil & Land Company of its right, title and interest in and to an undivided one-half of said tract of land consisting of 10,067.2 acres and of its interest in and right to the proceeds and every part of the proceeds that might be obtained by and from a sale of said tract of 10,067.2 acres, and did in pursuance of said combination and conspiracy and with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading and defeating said decree in said action No. 4424 and of depriving said U. S. Oil & Land Company of its right, title and interest in and to an undivided one-half of said tract of land and of any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, have and cause said deed dated May 26th 1908 to be made and executed and thereafter recorded as shown, avered and allged hereinabove in paragraph No. 11th of this bill; and that said deed dated May 26th 1908 was so as aforesaid made, executed and delivered by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union under and in pursuance and execution of said wrongful and unlawful combination and conspiracy.

That said C. A. Hunt, one of the defendants above named, is County Clerk of said County of Santa Barbara and Clerk of said Superior Court of said County of Santa Barbara, and has in his possession and under his control the deed and conveyance made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden and delivered to said Hunt as hereinabove alleged on the 8th day of July 1901.

16th. In cosideration whereof and inasmuch as your orator has no sufficient or adequate remedy at law for the wrongs, done or threatened to be done and hereinabove set forth, and inasmuch as any remedy at law will afford no protection to your orator against the same or against the sinking of wells and the extraction of the oil from said land by said W. P. Ham-

mon and F. C. Van Deinse or by other persons acting under them or under their direction and for as much as your orator is only relievable in a court of equity where matters of this kind are properly cognizable and relievable, and to the end therefore, that your orator may have and obtain the relief to which it is justly entitled in the premises, and that the defendants and each of them may, if they and each of them can, show **why** your orator should not have the relief prayed for, and may make a full disclosure and discovery of all of the matters aforesaid, and, according to the best and utmost of their and each of their remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinabove stated, your orator prays:

First: That it may please your Honors to grant unto your orator a Writ of Subpoena of the United States of America directed to the said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, with the will annexed, Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, Teresa Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also known as Muriel Margaret Bell, Robina Bell, Catherine M. Bell, also known as Kate M. Bell, Marie T. Holman, formerly Marie T. Bell, Arthur S. Holman, husband of Marie T. Holman, Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auzerais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. Van Deinse, George Henry Howard as executor of the last will and testament of George Staacke, deceased, Union Oil Company of California, a corporation, Mercantile Trust

Company of San Francisco, a corporation, San Francisco Savings Union, a corporation, Savings Union Bank and Trust Company, a corporation, The Associated Oil Company, a corporation, The Associated Transportation Company, a corporation, Rauer Law and Collection Company, a corporation, Rauer's Law and Collection Company, a corporation, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, and to such other persons as shall in the discretion of your Honors appear and answer to the hearing and determination of this cause, commanding them and each of them on a day certain to appear and answer under oath to this bill of complaint and to each and all of the matters and allegations therein stated, and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and of good conscience.

Second: That said defendants and each of them be required to set forth any and every adverse interest, claim, or demand in or to said tract, piece and parcel of land consisting of 10,067.2 acres in this bill of complaint mentioned and described, to the end that the same may be justly adjudicated, and declared null and void as against your orator, and that the title and ownership of your orator in and to an undivided one-half of said tract, piece and parcel of land and other property in this bill of complaint described be established and confirmed and quieted as against any and all claims of said defendants and of each and every of them, and all clouds on the said tract, piece and parcel of land and other property forever removed.

Third: That your Honors grant unto your orator your writ of injunction and that such injunction be issued out of and under the seal of this Honorable Court commanding the said W. P. Hammon and F. C. Van Deinse, defendants above named, and each and every one of them, their servants, agents, attorneys, employes, and workmen, and any and all persons under the authority, direction or control of said defendants

W. P. Hammon and F. C. Van Deinse, or of any of them to absolutely desist and refrain from sinking or boring any well or wells for oil in or upon any part or portion of said 10,067.2 acres of land or upon or in the tract, piece and parcel of land hereinabove in this complaint mentioned and described and from extracting, taking or removing any oil out of or from said land or out of or from any well or wells on or in said tract of land, until such time as your Honors shall direct and appoint a hearing herein;

Fourth: That said defendants W. P. Hammon and F. C. Van Deinse, and each of them, be restrained from the commission of any of the acts or doings hereby sought to be enjoined, and that upon such hearing the writ herein prayed for pending this suit be made and confirmed until the final determination of this suit, and that thereupon said injunction be made perpetual;

Fifth: That upon the hearing of this suit and an adjudication, your orator be quieted and confirmed in its title to an undivided one-half of said tract, piece and parcel of land hereinabove and in said decree in said action No. 4424 described, consisting of 10,067.2 acres, and that it be adjudged and decreed that said defendants have not and each of said defendants has not any estate, right, title or interest of, in or to said undivided one-half of said tract, piece and parcel of land of 10,067.2 acres of which complainant is owner in fee;

Sixth: That said defendants and each and all of them be forever debarred, enjoined and restrained from asserting and also from maintaining any claim, right, title or interest whatever in or to said undivided one-half of said 10,067.2 acres of land, of which the complainant is owner in fee, or of, in or to any part or portion thereof adverse to the complainant;

Seventh. That it be adjudged and decreed that said pretended deed and conveyance of May 26th, 1908, is a fraud upon the right, title and interest of the complainant in and to an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres, and was made and executed contrary to and in violation of said decree in said action No. 4424, and with the fraudulent

and wrongful intent, object, purpose and design of depriving the complainant of its right, title and interest in and to the undivided one-half of said tract of land consisting of 10,067.2 acres of land and of obtaining an unfair and unconscionable advantage over the complainant;

Eighth: That it be adjudged and decreed that the said Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, make, execute and deliver to the complainant a good and sufficient deed and conveyance in fee simple of an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Ninth: That it be adjudged and decreed that the Clerk of said Superior Court of Santa Barbara County deliver to the County Recorder of the said County of Santa Barbara the said deed of November 21st 1901, made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden, to be by said Recorder recorded in the records of the said County of Santa Barbara;

Tenth: That it be adjudged and decreed that the said Mercantile Trust Company of San Francisco make, execute and deliver to the complainant a good and sufficient deed and conveyance, transferring and conveying in fee simple an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Eleventh: That it be ordered, adjudged and decreed that the defendants George Henry Howard, O. H. Harshbarger and George Henry Howard as executor of the last will and testament of George Staacke, deceased and each of them make, execute and deliver to the complainant a good and sufficient deed and conveyance in fee simple of an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Twelfth: That it be adjudged and decreed that the transfer and conveyance made by said George Henry Howard to said O. H. Harshbarger hereinabove in this complaint mentioned was wrongful, unlawful and fraudulent, was made with the fraudulent intent, object, purpose and design of depriving the complainant

of its right, title and interest in and to said undivided one-half of said 10,067.2 acres and to defeat the trust under which said George Staacke received and held the title to said tract, piece and parcel of land of 10,067.2 acres, and was made and executed by said George Henry Howard and was received by said O. H. Harsbarger with notice and knowledge of the trust under which said George Staacke received and held the title to said 10,067.2 acres of land;

Thirteenth: That a receiver be appointed by this honorable court in accordance with the practice of courts of Equity with full power and authority to take and hold possession of said tract, piece or parcel of land hereinabove in this complaint described and to collect and receive during the pendency of this suit or until such time as your honors shall direct and appoint a hearing herein all rents, issues, and profits of or arising from the same;

Fourteenth: That your orator may have such other further, different and additional relief, preliminary or final, as to this Honorable Court may seem meet and proper and which equity may require, and also judgment for the costs of your orator in this suit incurred.

March 2, 1912.

James L. Crittenden
and Richards & Carrier,
Solicitor for Complainant.

Barclay Henley

Of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco—ss.

On this twenty-seventh day of February, A. D., 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be

true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 27th day of February, 1912, at and in said City and County of San Francisco.

Flora Hall.

(Seal)

(Endorsed.) Filed Mar 2, 1912, Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

United States of America,
District Court of the United States, Southern District
of California, Southern Division.
In Equity.

The President of the United States of America, Greeting:

To Catherine M. Bell, also known as Kate M. Bell; Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. Doherty, J. S. Evans, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, C. A. Hunt and Union Oil Company of California, a corporation:

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the court room in Los Angeles, California, on the 6th day of May, A. D. 1912, to answer a Bill of Complaint exhibited against you in said Court by the U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation existing by and under the laws of the State of Arizona, and a citizen of said State of Arizona, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, the Honorable Olin Wellborn, Judge of the

District Court of the United States, this 4th day of March, in the year of our Lord one thousand nine hundred and twelve and of our Independence the one hundred and thirty-sixth.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of May, next, at the Clerk's Office of said Court pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Clerk's Office: Los Angeles, California.

United States Marshal's Office, Southern District of California.

I hereby certify, that I received the within writ on the day of 19 , and personally served the same on the day of 19 , on

by delivering to and leaving with
said defendant named therein, personally, at the County of in said district, a copy thereof.

Returned unexecuted

Leo V. Youngworth, U. S. Marshal.

Los Angeles,

By E. Dingle, Deputy.

May 29, 1912.

(Endorsed) Original Marshal's Civil Docket No. 1871. No. 140 Civil. U. S. District Court Southern District of California, Southern Division. In Equity. U. S. Oil & Land Company, vs. Teresa Bell, as Administratrix, etc., et al. Subpoena. Filed May 29, 1912, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk.

James L. Crittenden, S. F., Richards & Carrier, Santa Barbara, Solicitors for complaint.

United States of America, District Court of the United States, Southern District of California, Southern Division. In Equity.

The President of the United States of America, Greeting:

To Catherine M. Bell, John S. Bell, the Union Oil Company of California and C. A. Hunt.

.....
You are hereby commanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Los Angeles, California, on the 1st day of July, A. D., 1912, to answer a Bill of Complaint exhibited against you in said Court by the U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation, existing by and under the laws of the State of Arizona, and a citizen of said State of Arizona,.....
and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, The Honorable Olin Wellborn, Judge of the District Court of the United States, this 29th day of May, in the year of our Lord one thousand and nine hundred and twelve, and of our Independence the one hundred and thirty-sixth.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

(Seal)

Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of July next, at the Clerk's Office of said Court pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Clerk's Office: Los Angeles, California.

United States Marshal's Office, Southern District of

California.

I hereby certify, that I received the within writ on the 31st day of May, 1912, and personally served the same on the 11th day of June, 1912, on U. S. Oil & Land Co. by delivering to and leaving with W. L. Stewart, VP. U. S. Oil & Land Co., said defendant named therein, personally, at the County of Los Angeles, in said district, a copy thereof. Leo V. Youngworth, U. S. Marshal, By E. Dingle, Deputy. Los Angeles, June 11, 1912.

(Endorsed) Original. Marshal's Civil Docket No. 140 Civil. U. S. District Court, Southern District of California, Southern Division. In equity. U. S. Oil & Land Company, a corporation, vs. Teresa Bell, Administratrix, etc., et al. Alias Subpoena. Filed June 27, 1913, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Richards & Carrier.

(TITLE OF COURT AND CAUSE.)

Joint And Several Demurrer Of Certain Defendants To
Complainant's Bill Of Complaint.

Now come the defendants Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, by protestation, and not confessing or acknowledging all or any of the matters or things in the bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, Do Hereby Demur to said bill of complaint and for cause of demurrer, allege the following:

I. That it appears by the complainant's own showing by the said bill of complaint that it is not entitled to the relief prayed by the bill against these defendants, or against any of the defendants.

II. That it appears from the complainant's bill of complaint that each and all of the grounds therein alleged, and upon which relief is sought, are stale, and that the same should not be entertained by a Court of Equity at this time.

Wherefore these defendants, and each of them, pray that the bill of complaint be dismissed.

T. Z. Blakeman,

Solicitor for the Defendants Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

I Hereby Certify that the foregoing Demurrer is, in my opinion, well founded in point of law.

T. Z. Blakeman,

Solicitor for the said Defendants.

Northern District of California, City and County of San Francisco, ss.

Teresa Bell being duly sworn deposes and says that she is one of the defendants in the above entitled action, that she has heard read the foregoing demurrer and she solemnly swears that it is not interposed for delay and that the same is true in point of law.

Teresa Bell.

Subscribed and sworn to before me this 31st day of May, 1912.

(Seal)

Edith W. Burnham.

Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed) Filed June 3, 1912. William Van Dyke, Clerk.

By Charles N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint And Several Answer Of Certain Defendants To

Complainant's Bill Of Complaint.

Now come the defendants Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, and Teresa Bell, and, answering the bill of the complainant herein, jointly and severally deny, state, and allege as follows:

I. They, the said defendants, and each thereof, here answering, deny, upon information and belief, that the complainant, the U. S. Oil & Land Company, was a corporation formed and organized by and under the laws of the Territory of Arizona, or that the U. S. Oil & Land Company is a corporation existing by and under the laws of the State of Arizona, or is a corporation, or that the said U. S. Oil & Land Company is a citizen of the State of Arizona, or that the said U. S. Oil and Land Company was organized as, or ever became, a corporation under or by the laws of the Territory of Arizona, or that the said U. S. Oil & Land Company ever became or was or is a corporation existing by or under the provisions of the Constitution or laws of the State of Arizona.

II. These defendants and each of them deny that the complainant is the owner in fee simple absolute, or otherwise, of an undivided one-half, or of any portion, of that certain tract, piece and parcel of land lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, being the tract, piece and parcel of land bounded and particularly described in the complainant's bill of complaint, at pages 4 to 7, inclusive, thereof.

III. These defendants, and each of them, deny that George Staacke ceased to be Executor of the Estate of

Thomas Bell, deceased, on the 4th day of May, 1900; but these defendants, and each of them, state and allege that, on the 23rd day of March, 1900, the Superior Court of the State of California, in and for the City and County of San Francisco, having charge and jurisdiction in the settlement of the Estate of Thomas Bell, deceased, duly made and entered its Order in the matter of the said Estate, suspending the powers of the said George Staacke as the sole remaining Executor of the will of the said decedent, Thomas Bell, and appointing Teresa Bell, one of the defendants herein, as Special Administratrix of the Estate of the said Thomas Bell, deceased; that the said Teresa Bell thereupon and on the 23rd day of March, 1900, duly qualified as such Special Administratrix, and Letters of Special Administration of the said Estate were duly issued to her under the seal of the said Court, and she thereupon, as such Special Administratrix, took possession of the assets, books records and papers of the said Estate, and thereafter continued and remained as Special Administratrix of the Estate of Thomas Bell, deceased, until she qualified, as hereinafter alleged, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that, on the 3rd day of May, 1900, after a trial had before the said Superior Court of the charges made against the said George Staacke as Executor; the said Superior Court made its Order revoking the Letters Testamentary theretofore issued to the said George Staacke as Executor of the will of the deceased Thomas Bell; that the said George Staacke appealed to the Supreme Court of the State of California from the said Order of the Superior Court revoking the said Letters Testamentary; that, on the 24th day of December, 1901, the judgment of the Supreme Court of the State of California was made in the matter of the said appeal by the said George Staacke, whereby the said Order revoking the said Letters Testamentary was affirmed; that, after the Order of the said Superior Court revoking the said Letters Testamentary issued to the said George Staacke had become final as aforesaid, the said Teresa

Bell, who was and is the widow of the said deceased Thomas Bell, petitioned the said Superior Court for General Letters of Administration upon the said Estate of Thomas Bell, deceased, with the Will annexed, and thereafter, to wit, on the 13th day of February, 1902, the said Superior Court duly made and entered its Order in the matter of the said Estate of Thomas Bell, deceased, whereby the said Teresa Bell was appointed Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she thereafter, to wit, on the 19th day of February, 1902, duly qualified as such Administratrix, and Letters of Administration were, on the 19th day of February, 1902, issued to her under the seal of the said Court, as Administratrix of the said Estate with the Will annexed; that she, the said Teresa Bell, thereupon ceased to be Special Administratrix of the said Estate, and thereupon became, and ever since has been, Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed.

IV. These defendants, and each of them, admit that the defendants Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, Eustace Bell, Reginald Bell, Muriel Bell, Robina Vellguth, Arthur S. Holman and Peter Crosby claim and assert an estate and interest in and to said tract of land, as the heirs and devisees, or as assignees of the heirs and devisees, of the said Thomas Bell, deceased; but they deny that any of the other of these defendants claim or assert, or has any estate or interest in said tract of land, or in any part or portion thereof, except that the defendants Alexander D. Keves, Thomas E. Palmer and Florence Adele Gibson claim an interest in said land as mortgagees of the defendant, Muriel Bell; except that the defendant Rauer's Law and Collection Company claims an interest in said land as the holder of a judgment against the defendant Thomas Frederick Bell, and the defendant Josephine M. Holbrook claims an interest as mortgagee of the defendants Thomas Frederick Bell and Bessie M. Bell, and except that W. P. Hammon and F. C. Van Deinse claim portions as grantees of the heirs of Thomas Bell, deceased.

These defendants, and each of them, deny that the claims of the defendants having interests as aforesaid in said land are without any right whatever, or that they and each of them have not any right, title or interest in or to said tract of land, or any part or portion thereof; and they deny that the claims made by those defendants hereinbefore alleged to have an interest in said land are wrongful and unlawful and without any right whatever, or are wrongful or unlawful or without any right; and they deny that said defendants hereinbefore alleged to have an interest in said land have not any right, title or estate or interest in or to the undivided one-half of the said tract, piece and parcel of land, or in or to any part or portion thereof.

V. These defendants, and each of them, deny that the judgment alleged in the bill of complaint to have been made and filed in the Superior Court of Santa Barbara County on the 29th day of June, 1901, in the action in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as Executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," was in the words and figures alleged and set forth in said bill of complaint; but admit that a judgment of like purport was made by the said Superior Court and filed in said action on the 29th day of June, 1901.

VI. These defendants, answering that portion of Paragraph 8th which refers to the notice of appeal by George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, to the Supreme Court of the State of California, allege that the said bill of complaint does not state correctly or fully the appeal taken or the action of the Supreme Court of the State of California in disposing of the said case; but these defendants, and each of them, allege that the said notice of appeal, dated as alleged on the 8th day of July, 1901, included a notice of appeal taken to the said Supreme Court from the Order of the said Superior Court made and entered on the 7th day of June, 1901, denying the motion of the said defendants

George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, for a new trial of the said action; that the plaintiff in said action moved the said Supreme Court of the State of California to dismiss both of the appeals of the said defendants, to-wit, the appeal from the order denying a new trial and the appeal from the judgment; that the Supreme Court of the State of California granted the motion of the plaintiff to dismiss the appeal taken from the judgment, but denied the motion to dismiss the appeal from the Order refusing a new trial.

These defendants, and each of them, deny that the said judgment and decree of the said Superior Court upon the dismissal of the appeal from the judgment by said Supreme Court thereby became and was affirmed, and they deny that the said judgment and decree ever since has been, or remains, or still is in full force, or in or of any force or effect whatever; and they deny that said judgment and decree was or is a final adjudication of the rights or interests of the parties to the said action in which it was rendered.

And these defendants, and each of them, further answering in respect to said judgment and decree, allege that the said appeal by the said defendants from the said Order denying their motion for a new trial, after the dismissal as aforesaid of the appeal from the judgment, came on for hearing and was heard by the said Supreme Court of the State of California, and the said Supreme Court of the State of California, on the 28th day of December, 1903, made and entered its Order and judgment whereby the Order of the said Superior Court denying the said defendants' motion for a new trial of the said action was reversed and a new trial of said action ordered; "except as to the issues covered by the 23rd Paragraph of the Findings and the following portion of the 22nd Paragraph of the Findings, to wit: 'That John S. Bell was indebted to Thomas Bell, on the 16th day of October, 1892, the day that Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15', and Paragraph '4'

of the Conclusions of Law, and except as to the issues covered by the 'Additional Findings'"; that is to say, the Supreme Court, by its judgment aforesaid ordered a new trial of all the issues made by the pleadings in the said action of John S. Bell vs. George Staacke et al., except the issues relating to the indebtedness of the said John S. Bell to Thomas Bell at the date of the death of Thomas Bell. That the new trial of the said action ordered by the Supreme Court as aforesaid was had in the said Superior Court, April 19th to May 22nd, 1904, and the plaintiff therein, the said John S. Bell, and James L. Crittenden, the grantee of John S. Bell, and the grantor of the complainant U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial was ordered as aforesaid, were, by the respective parties to the said action, submitted to the said Superior Court for decision, and thereafter, to wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it was decided that a lien existed upon the tract of land described in the complaint in said action, being the same tract of land described in the bill of complaint herein, of which the complainant herein claims an undivided one-half, in favor of the said defendant Teresa Bell as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, for the payment to her, as such Administratrix, under the allegations in the cross-complaint of the defendants in said action, in the sum of \$95,901.07 and accruing interest, and that the said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the cost and expenses of said sale and the amount aforesaid of said lien; that the judgment of the said Superior Court, according to the said decision, was duly entered in said action, on the 28th day of October, 1904, to wit, judgment that there was due and owing from John S. Bell to the defendant Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, the sum of

\$95,901.07, and that the said sum and the costs of the said defendant, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint of the complainant herein; and that the defendant George Staacke held the legal title to said land, in trust, first as security for the payment of the aforesaid sum of \$95,901.07 and said costs; and, second, in trust for the use and benefit of said John S. Bell; that all of said land be sold by the Commissioner appointed therein at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale, and that said Commissioner pay out the proceeds of said sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix the said costs and the said sum of \$95,901.07 and accruing interest, and that the plaintiff, and all persons claiming under him, be forever barred and foreclosed of and from all equity of redemption in and to said land, from and after the delivery of said Commissioner's deed, and that the purchaser of said land at said Commissioner's sale be let into possession thereof, and that, if the moneys arising from said sale be insufficient to pay the amount found due to said Administratrix, judgment for such deficiency be docketed against the plaintiff, John S. Bell. That the said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this section, in which the complainant claims an undivided one-half.

These defendants, and each of them, further allege that an appeal to the Supreme Court of the State of California was duly taken and prosecuted from the said judgment of the Superior Court made and entered as aforesaid on the 17th day of October, 1904, by the plaintiff therein, John S. Bell, and by his grantees, James L. Crittenden and Kate M. Bell, and that thereafter the said Supreme Court, on the 2nd day of January, 1906, made and entered its Order and judgment whereby the said

appeal from the said judgment was dismissed. That the plaintiff, John S. Bell, in the said action, and his grantees, James L. Crittenden and Kate M. Bell, who were, as alleged in the complainant's bill of complaint herein, allowed to prosecute the said action of John S. Bell vs. George Staacke et al., in the name of the plaintiff, made a motion for a new trial of the said action, which resulted as aforesaid in the judgment entered as aforesaid on the 17th day of October, 1904, and said motion for a new trial was, by said Superior Court, denied, and an appeal from said Order denying a new trial as aforesaid was duly taken by and in the name of the said plaintiff, John S. Bell, to the Supreme Court of the State of California; that the said Supreme Court, on the 22nd day of July, 1907, made and entered its Order whereby the said appeal from the said Order of the Superior Court, denying said motion for a new trial, was affirmed.

VII. These defendants, and each of them, deny that the Additional Findings and Conclusions of Law made and filed by the Judge of the said Superior Court on the 7th day of June, 1901, in the said action entitled "John S. Bell vs. George Staacke et al." were made or filed upon or at a special instance and request of the Attorneys of and for the defendants in said action; but allege that said Additional Findings and Conclusions of Law were, as therein stated, made by the said Court of its own motion.

VIII. These defendants, and each of them, further answering, state that it is and has been since and prior to the first day of January, 1900, the law of the State of California, when a judgment of the Superior Court of the said State has been duly made and entered in an action pending therein against the plaintiff or defendant, and the losing party has appealed to the Supreme Court of the said State from the judgment, and has moved in the said Superior Court for a new trial of the action and the motion for a new trial has been denied by the said Superior Court, and an appeal from the Order denying a new trial has been taken by the said losing

party to the Supreme Court of the said State, and the appeal from the judgment has been dismissed or affirmed by the said Supreme Court, and thereafter the said Supreme Court has considered the said appeal from the Order denying a new trial and has made its judgment reversing the Order denying a new trial and ordering a new trial, the effect of the said judgment of the Supreme Court reversing the Order denying a new trial and ordering a new trial of the action is to vacate and set aside the said judgment, and that, thereupon, the action remains pending in said Superior Court for the re-trial, to all intents and purposes as if no previous trial had been had or prior judgment entered.

IX. These defendants, and each of them, deny that the time to serve and file any notice of intention to move for a new trial in the said action entitled "John S. Bell vs. George Staacke et al." after the decision therein made by the said Superior Court on the 6th day of March, 1901, expired on or about the 17th day of June, 1901; but these defendants, and each of them, allege that notice of intention to move for a new trial in said action, after the said decision of the said Court made on the 6th day of March, 1901, was duly made, served and filed thereafter, within ten days, by the defendants in said action, after service of notice upon them of the making and filing of the said decision. And these defendants, and each of them, deny that the Findings of Fact and Conclusions of Law, and the decision of the said Superior Court in said action of John S. Bell vs. George Staacke et al., became, on the 9th day of July, 1901, or ever since have been, final, conclusive and binding, or final or conclusive or binding upon all the parties to the said action, or upon their successors in interest, or upon each or all or any of the heirs of said Thomas Bell, deceased; and they, and each of them, deny that the jurisdiction and power of the said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever or ceased to exist; and they, and each of them, deny that the said Superior Court, or the Supreme Court of the State of California,

or any Appellate Court of the said State, ceased to have any jurisdiction to entertain or hear or pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any Order made on any such notice or motion, or to modify, alter or change, in any way or manner or respect, said judgment of said Superior Court. These defendants, and each of them, deny that the Order and judgment of the Supreme Court, made on the 16th day of September, 1902, by which the appeal taken by the defendants in the said action entitled "John S. Bell vs. George Staacke et al.", was dismissed, has never been modified, vacated or set aside; but these defendants, and each of them, state and allege that the judgment of the said Supreme Court thereafter made on the appeal of the said defendants from the Order of the Superior Court denying their motion for a new trial, by which the Order of the said Superior Court denying a new trial was reversed and a new trial in said action ordered, did, in its effect, vacate, set aside and render of no effect the judgment of the said Superior Court theretofore entered.

X. These defendants, and each of them, deny that the said George Staacke ever made or executed to James L. Crittenden and Catherine M. Bell, or delivered, on the 9th day of July, 1901, or at any other time, to C. A. Hunt as County Clerk of the said County of Santa Barbara, or as Clerk of said Superior Court, any deed of conveyance under or in accordance with the judgment and decree made and filed in said action of John S. Bell vs. George Staacke et al., on the 29th day of June, 1901, whereby said George Staacke granted and conveyed and transferred to the said James Crittenden, in fee simple or otherwise, an undivided one-half of all said tract of land containing 10,067.2 acres; but these defendants, and each of them, allege that, when the defendants in the said action of John S. Bell vs. George Staacke et al. appealed to the Supreme Court from the judgment therein made and filed on the 29th day of June, 1901, and from the Order of the said Superior Court denying the motion of the defendants for a new trial, they were re-

quired, under and by the laws of the State of California, in order to obtain a stay of execution of that part of the judgment from which they had appealed as aforesaid, to make and deposit with the Clerk the deed of conveyance required by the said judgment and decree to be executed, and a deed of conveyance such as the said judgment required to be made and executed by the said George Staacke to the said James L. Crittenden and Catherine M. Bell was, by the said defendants so appealing, procured to be made, and was made and duly acknowledged by the said George Staacke and delivered to the said C. A. Hunt as the Clerk of the said Superior Court, for the purpose of complying with the requirement of the law as aforesaid, in order to obtain a stay of the execution of the said judgment from which the appeal as aforesaid was taken. And these defendants, and each of them, deny that the said deed of conveyance, made and acknowledged as aforesaid, was delivered to the said C. A. Hunt, as such Clerk, for James L. Crittenden or Catherine M. Bell, or for the benefit of them or either of them; and these defendants, and each of them, deny that the said deed of conveyance was an absolute grant, deed, transfer and conveyance of the title in fee of, in and to said tract, piece and parcel of land of 10, 067.2 acres to said James L. Crittenden and Catherine M. Bell; and these defendants, and each of them, deny that the said deed of conveyance vested unto said James L. Crittenden and Catherine M. Bell an undivided one-half of said land, or of each or any part thereof, or that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901, or ever, or at all.

XI. These defendants, and each of them, deny, upon information and belief, that the said U. S. Oil & Land Company was duly created or organized under and by virtue of the laws of the Territory of Arizona; and these defendants, and each of them, deny, upon information and belief, that the U. S. Oil & Land Company ever had its principal place of business outside of the Territory of Arizona and in the City and County of San

Francisco; and they deny upon information and belief that the U. S. Oil & Land Company was such corporation, or any corporation, on the 18th day of September, 1902; and they deny, upon information and belief, that the U. S. Oil and Land Company had, for a long time, or for any time, prior to the 18th day of September, 1902, or has ever since, been a corporation, or is now a corporation, existing by or under the Constitution and laws of the State of Arizona.

XII. These defendants, and each of them, deny, upon information and belief, that James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration, sold, granted, transferred and conveyed, in fee simple or otherwise, to the U. S. Oil & Land Company an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; but these defendants, and each of them, allege, upon like information and belief, that the said deed of conveyance from James L. Crittenden and Nina D. Crittenden to the U. S. Oil & Land Company was made without any consideration moving from the said grantee; and these defendants, and each of them, on like information and belief, deny that, on the 5th day of July, 1910, for a valuable consideration, or any consideration, the U. S. Oil & Land Company sold, granted, transferred and conveyed, in fee simple or otherwise, an undivided one-half of said 10,067.2 acres tract of land to the San Luis Land and Improvement Company by good and sufficient deed; and they deny, upon like information and belief; that the San Luis Land and Improvement Company is, or ever was, a corporation.

XIII. These defendants, and each of them, further answering, state and allege that, within the time provided by law, after the said Findings of Fact and Conclusions of Law in said action of John S. Bell vs. George Staacke et al. were made and filed on March 6th, 1901, as alleged in the bill of complaint, the defendants in said action, to wit, said George Staacke and Teresa Bell as the Special Administratrix of the Estate of Thomas Bell, deceased, made, served and filed in said action their

notice of intention to move for a new trial of said action, and thereafter, in due course of law, the said defendants made and submitted to said Court their motion for a new trial of said action, which motion was by said Court thereafter, to-wit, on June 7th, 1901, by an order duly entered in the minutes of said Court, denied. That thereafter, to-wit, on June 29th, 1901, said defendants made and served upon the plaintiff in said action, and filed with the Clerk of said Court, their notice of appeal to the Supreme Court of the State of California from the said order of the Court denying their said motion for a new trial of said action; and thereafter, in due time, said defendants made and filed in said action a sufficient and proper undertaking on their said appeal. That thereafter, in due time, said defendants filed in said Supreme Court their transcript of record on appeal from said order denying their said motion for a new trial. That thereafter the questions and matters involved in said appeal were argued by the respective parties and submitted to the said Supreme Court for decision. And thereafter the said Supreme Court, to-wit on the 28th day of December, 1903, made and entered its judgment and order in said action, reversing the said order of the Superior Court denying said motion of said defendants for a new trial, except as to the issues involving the indebtedness of John S. Bell to Thomas Bell, and ordering a new trial of all issues in said action except those relating to the said indebtedness of John S. Bell to Thomas Bell.

These defendants, and each of them, further state and allege that said order and judgment of reversal has never been vacated or set aside; that the new trial ordered by the Supreme Court as aforesaid was had in said Superior Court, April 19th, 1904, to May 2nd, 1904; that the plaintiff, John S. Bell, and his grantees, the said James L. Crittenden and Catherine M. Bell, appeared, submitted to the jurisdiction of the Court, and participated in said new trial, to-wit, they introduced and submitted to the Court on said new trial all the evidence that they had introduced and submitted

on the former trial of said action and more. That, thereafter, all the issues in said action, as to which a new trial was ordered as aforesaid, were by the respective parties submitted to the said Superior Court for decision; and thereafter, to-wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it decided that a lien existed upon the tract of land described in the bill of complaint herein and in the complaint and cross-complaint in said action of John S. Bell vs. George Staacke et al. in favor of the said defendant Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, for the payment to her, as such Administratrix, of the sum of \$95,901.07 and accruing interest, and that said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the costs and expenses of said sale and the amount aforesaid of said lien. That judgment according to said decision was duly entered in said action on the 28th day of October, 1904, to-wit, judgment that there was due and owing from John S. Bell, the plaintiff, to Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, the sum of \$95,901.07, and that said sum of \$95,901.07 and the costs of said defendants, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint in this action, and that the defendant George Staacke held the legal title to said land in trust, first, as security for the payment of the aforesaid sum of \$95,901.07 and said costs, and second, in trust for the use and benefit of said John S. Bell; that all said land be sold by the Commissioner therein appointed at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale; that said Commissioner pay out of the proceeds of such sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix, the said costs and the said sum

of \$95,901.07 and accruing interest; that the plaintiff and all persons claiming under him be forever barred and foreclosed of and from all equity of redemption in and to said land from and after the delivery of said Commissioner's deed; that the purchaser of said land at said Commissioner's sale be let into possession thereof; and that, if the moneys arising from said sale be insufficient to pay the amount found due said Administratrix, a judgment for such deficiency be docketed against the plaintiff John S. Bell. That said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this action, and in which the plaintiff claims an undivided one-half interest. That said Commissioner duly qualified, as required by the law and the said judgment. That the said judgment has never been vacated, set aside, modified or reversed, and the same became final and conclusive upon the parties to the said action and their assigns. That, on the — day of February, 1906, an order of sale was issued out of said Superior Court, upon said judgment and under the seal of said Court, to the said Commissioner, commanding him to sell the said tract of land in said judgment and order of sale described, accordingly as adjudged and directed by said judgment; and the said Commissioner, in pursuance of said judgment and said order of sale, did, on March the 5th, 1906, after due and legal notice given according to law, sell at public auction, at the place and hour required by law, the said tract of land and all thereof, to the highest bidder, to-wit, to said Teresa Bell, as the said Administratrix of the Estate of Thomas Bell, deceased, for the sum and amount due her by said judgment, together with said costs and the fees of said Commissioner, and all costs and expenses of said sale; and the said Commissioner thereupon, and on said 5th day of March, 1906, executed and delivered to said purchaser his certificate of said sale, and on the same day filed for record in the office of the County Recorder for said Santa Barbara County a duplicate of said certificate of sale. That thereafter, to-wit, on the 8th day of April, 1907, there having been

no redemption of said lands or of any part or portion thereof, the said Commissioner made, executed and delivered to said purchaser, to-wit, the said Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, a deed of conveyance of all said tract of land, and said Administratrix thereupon immediately entered into the possession of all said land, except the ranch residence, one corral and the garden, and about thirty-five acres surrounding said residence, which said residence and garden, corral and surrounding thirty-five acres were, until January 14th, 1911, occupied by said John S. Bell and his wife, Kate M. Bell, when said Administratrix recovered possession thereof by writ of assistance issued in said Superior Court in favor of said Teresa Bell as such Administratrix; and said Administratrix has ever since continued in the possession of the said lands and all thereof. That the said Administratrix, after the delivery of said certificate of sale to her as aforesaid, to-wit, on March 16th, 1906, notified all the tenants of said John S. Bell, and of his grantees, the said James L. Crittenden and Catherine M. Bell, alias Kate M. Bell, and the U. S. Oil & Land Company, of the fact that she held said certificate of sale, and demanded of said tenants the rents of said lands, and the said tenants and each and all thereof attorned to said Administratrix and paid to said Administratrix all the rents of said land falling due thereafter, to-wit, the rents of all said tract of land, except of the ranch residence and small portion of the land occupied as aforesaid by John S. Bell and his said wife; and said Administratrix ever since has been in the quiet and peaceable possession of all that portion of said tract of land occupied by said tenants who attorned to her as aforesaid.

These defendants, and each of them, further answering, deny that the said Superior Court in and for the County of Santa Barbara, or the Judge of said Court, in that action wherein Kate M. Bell et al. were plaintiffs and the San Francisco Savings Union et al. were defendants, being action No. 4424 in said Court, ever made the decision in the words and figures as alleged in

paragraph 10th of complainant's bill of complaint. These defendants, and each of them, admit that the said Court, after a trial of the issues raised by the pleadings in said action No. 4424, on March 14th, 1905, made and filed its decision consisting of Findings of Fact and Conclusions of Law; but they deny that the facts were found as alleged in paragraph 10th of said bill of complaint; and these defendants, as and for a part of their answer, refer to the said decision and the judgment in said action and make the same and each and all thereof a part of this their answer to the complainant's bill of complaint.

These defendants, and each of them, deny that said Teresa Bell, as Administratrix or otherwise, ever appealed to the Supreme Court of California from the judgment entered in said action No. 4424; but they admit that said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, appealed from a portion of said judgment, to-wit, from all thereof except that portion which adjudged that the plaintiffs Kate M. Bell and James L. Crittenden and defendant to cross-complaint, U. S. Oil & Land Company, jointly and severally, take nothing by said action.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix or otherwise, voluntarily paid to the said Mercantile Trust Company and San Francisco Savings Union or to either, the sum of \$179,400.40, or any part thereof, but allege that said sum of \$179,400.40 was paid to the San Francisco Savings Union on June 15th, 1908, upon an order of Court as hereinafter alleged, and that, long prior to that date, to-wit, on the 6th day of March, 1907, the said Estate of Thomas Bell, deceased, had become and ever since remained the owner of the said parcel of land containing 10,067.2 acres, by deed of conveyance by the Commissioner appointed to sell said land under the decree and order of sale entered in said action of John S. Bell vs. George Staacke et al. to said Teresa Bell, as such Administratrix, as hereinbefore in this answer alleged.

These defendants, and each of them, state and allege

that, prior to making the payment of said \$179,400.40, to-wit, on the 12th day of June, 1908, the Superior Court of the City and County of San Francisco, State of California, made and entered its order and judgment in the matter of the said Estate of Thomas Bell, deceased, whereby it ordered and adjudged that Teresa Bell as such Administratrix pay from the money and funds of the said Estate the sum of \$179,411.40 to said San Francisco Savings Union, in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said Estate and in satisfaction of the said judgment entered in said action No. 4424.

These defendants, and each of them, allege that the said sum of \$179,400.40 was paid by said Teresa Bell as such Administratrix from the moneys and funds of said estate, in accordance with the said judgment and order of said Superior Court in and for the City and County of San Francisco, and in accordance with said judgment entered in said action No. 4424, and to redeem the property of said estate, to-wit, said parcel of land of 10,067.2 acres, from the lien of said judgment entered in said action No. 4424; and the said San Francisco Savings Union, upon its receipt of the said sum of \$179,411.40, made, executed and delivered to said Teresa Bell, as such Administratrix, a deed of re-conveyance of all the land embraced in its said mortgage, to-wit, the 4000 acre tract and the said tract of 10,067.2 acres.

These defendants, and each of them, deny that said payment made as aforesaid by said Teresa Bell as such Administratrix was made with the intent, object and design, or with the intent, or object, or design, of depriving plaintiff of its right and interest, or right or interest, of, in and to, or of, or in, or to said undivided one-half of 10,067.2 acres of land, or of any part or portion thereof, or of its right, interest and equity, or right or interest or equity, in and to, or in or to, such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said

lands by said Mercantile Trust Company under said judgment in said action No. 4424.

XIV. These defendants, and each of them, deny that the said Teresa Bell, as Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, has volunteered to pay to the defendant the Mercantile Trust Company of San Francisco and to the defendant San Francisco Savings Union, or to either of them, the sum of \$179,411.40; but these defendants, and each of them, allege that the said Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, acting under and in accordance with an order made by the said Superior Court of the said City and County of San Francisco, in the matter of the Estate of Thomas Bell, deceased, paid to the defendant the San Francisco Savings Union the sum of \$179,411.40; that the said sum of \$179,411.40 was the amount ascertained and adjudged to be due the said San Francisco Savings Union by said Superior Court in said action No. 4424, referred to in the bill of complaint of the complainant herein, in the decree of foreclosure made and entered by the said Superior Court in the said action upon the cross-complaint of the defendants therein, foreclosing a mortgage which the said San Francisco Savings Union held as security for the payment of the said sum last mentioned, upon two certain tracts of land situate in the County of Santa Barbara, State of California, one of which tracts was described in the said judgment of foreclosure as containing 4000 acres, and the other was described in said judgment of foreclosure as containing 10,067.2 acres, the latter tract being the same tract or parcel of land in which the complainant herein, in its bill of complaint, claims an undivided one-half; that the said tract of 4000 acres was the property of the said Thomas Bell, deceased, at the date of his death, and remained as the property of his estate at the time the said decree of foreclosure aforesaid was entered; that, at the time the said decree of foreclosure was entered, the said other tract of land, to-wit, the said tract of land containing 10,067.2 acres, had

become and was the property, as hereinbefore alleged, of the Estate of Thomas Bell, deceased; that the Estate of Thomas Bell, deceased, owning the said tract of land containing 10,067.2 acres, was entitled to have the judgment aforesaid of the said Superior Court foreclosing the said mortgage and directing the sale of both said tracts paid and satisfied with the moneys of the said estate, and the costs and expenses of foreclosure sale thereby saved, and to that end and for that purpose, the order aforesaid of the said Superior Court of the City and County of San Francisco having charge of the settlement of the Estate of Thomas Bell, deceased, made its order aforesaid directing the said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to pay from the moneys of the said estate the amount aforesaid of \$179,411.40, due under the said judgment of foreclosure, to the said San Francisco Savings Union.

XV. These defendants, and each of them, deny that the making and execution of the said re-conveyance by the said Mercantile Trust Company and the San Francisco Savings Union was contrary to, or in violation of, the judgment in said action No. 4424, or of any of its provisions, or of any trust therein adjudged or declared; and they and each of them deny that the said re-conveyance was wrongful, fraudulent and unlawful, or wrongful or fraudulent or unlawful or in violation of any rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424, or at all, or under said judgment dated June 29th, 1901; these defendants, and each of them, deny that the said transfer by said Mercantile Trust Company of San Francisco to Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to-wit, the said re-conveyance, was made under or in pursuance of any combination and conspiracy, or combination or conspiracy, entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful and fraudulent intent, object, purpose and design, or wrong-

ful or unlawful or fraudulent intent or object or purpose or design, to defraud the said U. S. Oil & Land Company out of any right, title or interest in said 10,067.2 acres of land, or out of any right of the said U. S. Oil & Land Company, title or interest in or to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid; and they and each of them deny that the said U. S. Oil & Land Company had any right, title or interest whatever, at the date of the said re-conveyance by the said San Francisco Savings Union and the said Mercantile Trust Company, in the said tract of 10,067.2 acres of land, or in any part or portion thereof; and they and each of them deny that the said transfer, to-wit, the said re-conveyance made by the said Mercantile Trust Company and the San Francisco Savings Union, was made with any intent or purpose to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424; and they and each of them deny that the said transfer was made secretly or in pursuance and execution of any combination or conspiracy, or with any fraudulent intents, objects, purposes or designs whatever; and these defendants, and each of them, deny that the said Teresa Bell, the Mercantile Trust Company and the San Francisco Savings Union knew, or that each or any of them knew, at the time of the said transfer and of the payment of the said sum of \$179,400.40, that said tract of land of 10,067.2 acres was worth, and of the value of, at least \$500,000, or of any greater value than \$100,000, or that they knew that the development of oil near or adjoining said lands made them prospectively worth \$1,000,000 or more; they and each of them deny that the said transfer was a fraud upon the U. S. Oil & Land Company and contrary to, or in violation of, the said decree in said action No. 4424; they and each of them deny that the defendants in this action wrongfully and unlawfully, or wrongfully or unlawfully claim and assert, or claim or assert, that the said deed and conveyance of May 26th, 1908, transferred and vested in said Teresa

Bell as such Administratrix the title of, in and to said tract of land consisting of 10,067.2 acres; and they and each of them deny that the said claim of the defendants in this action was without merit or wrongful or unlawful or contrary to, or in conflict with, said judgment in said action No. 4424, or a fraud upon the complainant in this action, or was or is made with the wrongful or fraudulent or unlawful intents, purposes or designs of defrauding the said U. S. Oil & Land Company, or its successors or grantees, out of its interest in or title to an undivided one-half of said 10,067.2 acres of land; they and each of them deny that the said Mercantile Trust Company was required, in or by said decree in said action No. 4424, to advertise the said 10,067.2 acres of land, or sell or offer for sale the same when the money due the San Francisco Savings Union, under the provisions of the judgment in said action No. 4424, was tendered to and paid to the said San Francisco Savings Union by the owner of the lands described in said judgment of foreclosure; and they and each of them deny that the said Mercantile Trust Company has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424, or has attempted to transfer and dispose of the said tract of 10,067.2 acres of land contrary to, or in violation of, any trust declared or set forth in said decree in said action No. 4424, or with any wrongful or unlawful or fraudulent intents, objects, purposes or designs whatever; these defendants, and each of them, deny that the said George Staacke had any right, title or interest whatever in or to the said 10,067.2 acres of land, or in or to any portion thereof, at the time of the rendition of the said judgment in the said action No. 4424.

XVI. These defendants, and each of them, deny, upon information and belief, that the San Luis Land and Improvement Company is a corporation, and deny, upon like information and belief, that the San Luis Land and Improvement Company, for a valuable consideration sold, granted, transferred and conveyed, in fee simple or otherwise, to the complainant U. S. Oil &

Land Company, by good and sufficient deed and conveyance, or otherwise, an undivided one-half of said 10,067.2 acres of land; and these defendants, and each of them, allege upon information and belief, that the San Luis Land and Improvement Company and the said U. S. Oil & Land Company, and each thereof, are fictitious and sham corporations, and have no property, organization or identity, except the name; and these defendants, and each of them, allege, upon information and belief, that a name and semblance of organization was given the said U. S. Oil & Land Company and the San Luis Land and Improvement Company by James L. Crittenden, the grantee of the said John S. Bell, and that the said James L. Crittenden has used the names U. S. Oil & Land Company and San Luis Land and Improvement Company whenever it suited his purpose to make or assert any claims upon or in reference to the said 10,067.2 acres; and these defendants, and each of them, allege, upon information and belief, that the said James L. Crittenden is the actual complainant in this action, and that he is using the name U. S. Oil & Land Company for the complainant instead of his own.

XVII. These defendants, and each of them, have no information or belief on the subject sufficient to enable them to answer the allegations made upon pages 105, 106 and 107 of the bill of complaint herein to the effect that John S. Bell, on the 22nd day of December, 1906, for a valuable consideration, conveyed to Catherine M. Bell the said tract of 10,067.2 acres, and that said John S. Bell and Catherine M. Bell, on the 12th day of June, 1897, for valuable consideration, conveyed to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract of land, and that, on the 7th day of March, 1899, for a valuable consideration, the said Sidney M. Van Wyck, Jr., conveyed to James L. Crittenden all his right, title and interest in said tract of land; and, basing their denial upon that ground, they and each of them deny that the said tract of land of 10,067.2 acres or any part thereof, or any interest therein, was ever, for a valuable consideration, or for any

consideration, sold, transferred or conveyed by deed of conveyance, or otherwise, by John S. Bell to Catherine M. Bell, or John S. Bell and Catherine M. Bell to James L. Crittenden, or by James L. Crittenden and Nina D. Crittenden to U. S. Oil & Land Company, or by John S. Bell to James L. Crittenden and Sidney M. Van Wyck, Jr., or by Sidney M. Van Wyck, Jr., to James L. Crittenden; and these defendants, and each of them, deny that any deeds of conveyance have been executed and recorded by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., and James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company and San Luis Land and Improvement Company, or any of them, which granted and conveyed an undivided one-half of said tract of 10,067.2 acres of land.

XVIII. These defendants, and each of them, deny that the said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge, at any time, of any title or interest of the complainant in or to an undivided one-half of said 10,067.2 acres of land, or that they, or that either of them, at any time, had any notice or knowledge that the said tract of land had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener for the benefit of John S. Bell, or that John S. Bell was then the owner thereof, or that said Grover and Rosener had, on and prior to March 7th, 1889, agreed to convey said tract of land to said John S. Bell, or that said George Staacke paid no consideration whatever for said tract of land, or that said George Staacke received and executed said deed of conveyance and held the title to said tract of land as trustee.

These defendants, and each of them, deny that George Staacke received and accepted any deed of conveyance by Dwight W. Grover and Samuel Rosener and held the title to said 10,067.2 acres of land as trustee for the benefit of John S. Bell, from the time he received the same to the time of his death, or for or during any time whatever; and deny that the deed of conveyance by said Howard to said Harshbarger was made with

the or any fraudulent or unlawful intent, object or purpose or design, to defeat any trust upon which said land had been conveyed by said Grover and Rosener to said George Staaeke, or to deprive the plaintiff or the successors in interest of John S. Bell of the benefits of any trust or of their rights thereunder.

These defendants, and each of them, deny that each and all of the defendants in this action, or that any of them, ever had any notice that the judgment alleged to have been made and filed on the 29th day of June, 1901, in the action entitled "John S. Bell vs. George Staaeke et al.," was a valid, subsisting or final judgment, or that the findings made and filed in said action, March 6th, 1901, were valid, conclusive or final, or of any right, title or interest of the complainant of, in or to an undivided one-half of said tract of 10,067.2 acres of land.

These defendants, and each of them, deny that the defendants W. P. Hammon and F. C. Van Deinse did, on or about the 1st day of June, 1911, or at any time, wrongfully or unlawfully enter upon a portion of said lands, or bore a well for the purpose of extracting oil from said land, with the wrongful and unlawful intent, object, purpose and design, or that the complainant suffered any loss thereby or was damaged or injured thereby; and deny that the defendants W. P. Hammon and F. C. Van Deinse threaten or are about to bore, or cause to be bored, other wells, with any wrongful and unlawful intent, object, purpose and design; and deny that the extraction of oil from said land, of the sale thereof, by said Hammon or Van Deinse, or both, will damage or injure the complainant.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix, or otherwise, wrongfully or unlawfully claims or asserts that she has acquired title to said 10,067.2 acres of land, and deny that the complainant is, or ever was, entitled to any of the rents, issues or profits of said land, or of any part thereof; and deny that the appropriation by Teresa Bell, as such Administratrix, of any or of all the rents, income and profits of said land will cause any loss, injury or dam-

age to the complainant.

XIX. These defendants, and each of them, deny that, on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company, and San Francisco Savings Union combined and conspired together, and made and entered into a secret combination and conspiracy, or combination, or conspired together, or made or entered into a secret combination or conspiracy, to evade and defeat, or evade or defeat, the decree in said action No. 4424, or to deprive the complainant of any right, title or interest in or to an undivided one-half of said tract of 10,067.2 acres of land, or of any interest in, or part of the proceeds that might be obtained by a sale of said land, or that they did, in pursuance of said alleged combination and conspiracy, or with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of any right, title and interest in and to an undivided one-half of said tract of land, or any product of the sale thereof under said decree, have and cause said deed dated May 26th, 1908, to be made and executed and recorded; and deny that said deed dated May 26th, 1908, was made by said Mercantile Trust Company and San Francisco Savings Union, or by either of them, under or in pursuance of, or execution of, any wrongful or unlawful combination or conspiracy, or in pursuance or execution of any conspiracy or combination whatever.

These defendants, and each of them, deny that C. A. Hunt has in his possession or under his control the deed of conveyance made and executed by George Staacke to Catherine M. Bell and James M. Crittenden; and these defendants, and each of them, allege that the said deed of conveyance has served the purpose for which it was executed and deposited with said Clerk of the Court, as hereinbefore in this answer alleged, and is now of no effect or validity.

XX. Answering further, these defendants, and each of them, allege that each and every claim and all the

right, title and interest that the complainant herein ever had or asserted against, in, or to the said tract of 10.067.2 acres of land were disposed of against the complainant and its grantors by the final judgments of the Superior Court of the State of California, in and for the County of Santa Barbara, in the said two actions entitled "John S. Bell vs. George Staacke et al." and "Kate M. Bell, John S. Bell and James L. Crittenden, et al., vs. San Francisco Savings Union et al.," respectively, and by the sale under the foreclosure decree and order of sale issued thereon in the said action entitled "John S. Bell vs. George Staacke et al.," as hereinbefore in this answer alleged; but, notwithstanding that the said claims and asserted rights and interests of the complainant in and to the said tract of 10.067.2 acres were finally adjudicated, determined and disposed of, as hereinbefore alleged, against the complainant, the said complainant has continued to assert the said claims and harass the defendants in this action by bringing suit after suit upon said claims in the said Superior Court of the State of California, in and for the County of Santa Barbara, to-wit, the said U. S. Oil & Land Company, by its Attorney James L. Crittenden, commenced an action in the said Superior Court on the 9th day of March, 1910, against these defendants and the other defendants named herein, by filing a complaint therein which asserted substantially the same alleged cause of action as is asserted by the bill of complaint herein, and in which the same relief was asked and as is prayed for in the bill of complaint herein; that these defendants appeared in said action in the said Superior Court and made, served and filed their answer therein on the 9th day of April, 1910, and caused the said action to be set for trial on a day certain by the said Superior Court, at the City of Santa Barbara, State of California, to-wit, on the — day of —, 1910; that, on said day that the said action was set for trial as aforesaid, these defendants, by their counsel, appeared in said Court ready for trial; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court,

the said U. S. Oil & Land Company, by its attorneys the said James L. Crittenden and Richards and Carrier, filed and procured to be entered in the Clerk's office of said Court a dismissal of the said action; that the action so dismissed was numbered 7480 of said Superior Court.

That the said U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards and Carrier, on the 4th day of March, 1911, began another action against these defendants and the other defendants named in the bill of complaint herein, by filing a complaint in the Clerk's office of the said Court, which complaint set forth and alleged the same cause of action as was alleged in the previous action, to-wit, in the action No. 7480, and as is alleged in the bill of complaint herein. Said second action in said Superior Court was numbered 7787. That these defendants entered their appearance in the said action No. 7787 in the said Superior Court, and filed therein, on the 29th day of July, 1911, their answer, which answer set up the defense of res judicata in the final judgments in the said actions entitled "John S. Bell vs. George Staacke et al," and "Kate M. Bell et al. vs. San Francisco Savings Union et al," and the sale and conveyance of said tract of 10,067.2 acres under the decree and order of sale in the action entitled "John S. Bell vs. George Staacke et al," and these defendants thereupon caused the said action No. 7787 to be set for trial on a day certain by said Superior Court, to-wit, on the 17th day of October, 1911; that, on the said 17th day of October, 1911, these defendants appeared in the said Superior Court, at the City of Santa Barbara, ready for the trial of said action; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said attorneys for the said U. S. Oil & Land Company filed, in the name of said U. S. Oil & Land Company, in said Court, a dismissal of the said action and caused such dismissal to be entered; that the defense of these defendants interposed to said action No. 7787 in said Superior Court was the same as the defense interposed as aforesaid in said action No. 7480 of said Superior Court.

These defendants, and each of them, upon information and belief, allege that the U. S. Oil & Land Company named as complainant herein is not a corporation, but is given the name and semblance of a corporation by the said Attorneys James L. Crittenden and Richards and Carrier.

XXI. These defendants, and each of them, further answering, state and allege that the cause of action alleged in the bill of complaint, and each and all of the matters alleged therein as ground for relief, are stale and are barred by the Statutes of Limitation.

Wherefore these defendants, and each of them, having fully answered the bill of complaint, pray that the Court will ascertain and determine that the complainant is not entitled to any relief; that decree be entered dismissing the said bill of complaint; that the Court make its decree in favor of these defendants and of each of them, enjoining the complainant and its attorneys, the said James L. Crittenden and the said Richards and Carrier, and each and all of its agents, from bringing any other or further action or actions or proceedings upon any of the matters alleged and complained of in the bill of complaint; and that these defendants recover their costs; and that the Court will grant unto these defendants, and to each of them, such other or further relief as they may be entitled to in the premises.

Teresa Bell, Defendant.

T. Z. Blakeman,

Solicitor for the Defendants Teresa Bell, as Administratrix of the Estate of Thomas Bell, Deceased; George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the Will of George Staacke, Deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

State of California, City and County of San Francisco, ss.

Teresa Bell, being duly sworn, deposes and says:

That she is the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she is a defendant in the above entitled cause as such Administratrix, and also in her individual capacity; that she has heard read the foregoing Answer to the Bill of Complaint, and knows the contents thereof; that the same is true of her own knowledge, except as to matters therein stated upon information and belief, and as to those matters she believes it to be true.

Teresa Bell.

Subscribed and sworn to before me this 31st day of May, 1912.

Edith W. Burnham,
Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

TITLE OF COURT AND CAUSE.

The joint and several demurrers of the above named defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Llewellyn Auzerai, and Peter J. Crosby, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer sheweth:

That the said complainant has not made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants, respectively.

Wherefore, and for divers other good causes of demurrer, these defendants, respectively, demur to the said

bill of complaint and humbly demand the judgment of this Court whether they or either of them shall be compelled to make any further or other answer thereto.

Peter J. Crosby,

Solicitor for said defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby.

Northern District of California, City and County of San Francisco, ss.

W. E. Bell, also known as Eustace Bell, one of the defendants above named, makes solemn oath and says: That the foregoing demurrer is not interposed for delay, and that the same is true in point of law.

W. E. Bell, also known as Eustace Bell.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

Edith W. Burnham,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Peter J. Crosby,

Solicitor for said defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby.

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

TITLE OF COURT AND CAUSE.

Joint and Several Answer of Certain Defendants to Complainant's Bill of Complaint.

Now comes the defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais,

and Peter J. Crosby, and answering the bill of the complainant herein jointly and severally deny, state and allege as follows:

I. They, the said defendants, and each thereof, here answering, deny upon information and belief, that the complainant, the U. S. Oil & Land Company, was a corporation formed and organized by and under the laws of the Territory of Arizona or that the U. S. Oil & Land Company is a corporation existing by and under the laws of the State of Arizona, or is a corporation, or that the said U. S. Oil & Land Company is a citizen of the State of Arizona, or that the said U. S. Oil & Land Company was organized as, or has ever become, a corporation under or by the laws of the Territory of Arizona, or that the said U. S. Oil & Land Company ever became or was or is a corporation existing by or under the provision of the constitutions or laws of the State of Arizona.

II. These defendants and each of them deny that the complainant is the owner in fee simple absolute or otherwise, of an undivided one-half or of any portion of that certain tract, piece and parcel of land lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, being the tract, piece and parcel of land bounded and particularly described in the complainant's bill of complaint, at pages 4 to 7, inclusive, thereof.

III. These defendants, and each of them, deny that George Staacke ceased to be executor of the estate of Thomas Bell, deceased, on the 4th day of May, 1900, but these defendants and each of them, state and allege that, on the 23rd day of March, 1900, the Superior Court of the State of California, in and for the City and County of San Francisco, having charge and jurisdiction in the settlement of the Estate of Thomas Bell, deceased, duly made and entered its Order in the matter of the said Estate, suspending the powers of the said George Staacke as the sole remaining Executor of the will of the said decedent, Thomas Bell, and appointing Teresa Bell, one of the defendants herein, as Special

Administratrix of the Estate of the said Thomas Bell, deceased; that the said Teresa Bell thereupon and on the 23rd day of March, 1900, duly qualified as such Special Administratrix, and Letters of Special Administration of the said Estate were duly issued to her under the seal of the said Court, and she thereupon, as such Special Administratrix, took possession of the assets, books records and papers of the said Estate, and thereafter continued and remained as Special Administratrix of the Estate of Thomas Bell, deceased, until she qualified, as hereinafter alleged, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that, on the 3rd day of May, 1900, after a trial had before the said Superior Court of the charges made against the said George Staacke as Executor, the said Superior Court made its Order revoking the Letters Testamentary theretofore issued to the said George Staacke as Executor of the will of the deceased Thomas Bell; that the said George Staacke appealed to the Supreme Court of the State of California from the said Order of the Superior Court revoking the said Letters Testamentary; that, on the 24th day of December, 1901, the judgment of the Supreme Court of the State of California was made in the matter of the said appeal by the said George Staacke, whereby the said Order revoking the said Letters Testamentary was affirmed; that, after the Order of the said Superior Court revoking the said Letters Testamentary issued to the said George Staacke had become final as aforesaid, the said Teresa Bell, who was and is the widow of the said deceased Thomas Bell, petitioned the said Superior Court for General Letters of Administration upon the said Estate of Thomas Bell, deceased, with the Will annexed, and thereafter, to wit, on the 13th day of February, 1902, the said Superior Court duly made and entered its Order in the matter of the said Estate of Thomas Bell, deceased, whereby the said Teresa Bell was appointed Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she thereafter, to wit, on the 19th day of February, 1902, duly qualified as such Administratrix, and Letters of Administration were, on

the 19th day of February, 1902, issued to her under the seal of the said Court, as Administratrix of the said Estate with the Will annexed; that she, the said Teresa Bell, thereupon ceased to be Special Administratrix of the said Estate, and thereupon became, and ever since has been, Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed.

IV. These defendants, and each of them, admit that the defendants Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, Eustace Bell, Reginald Bell, Muriel Bell, Robina Vellguth, Arthur S. Holman and Peter Crosby claim and assert an estate and interest in and to said tract of land, as the heirs and devisees, or as assignees of the heirs and devisees, of the said Thomas Bell, deceased; but they deny that any of the other of these defendants claim or assert, or has any estate or interest in said tract of land, or in any part or portion thereof, except that the defendants Alexander D. Keyes, Thomas E. Palmer and Florence Adele Gibson claim an interest in said land as mortgagees of the defendant, Muriel Bell and except that the defendant Rauer's Law and Collection Company claims an interest in said land as the holder of a judgment against the defendant Thomas Frederick Bell, and the defendant Josephine M. Holbrook and the defendant John Lewellyn Auzerai and defendant Daniel A. McColgan and defendant, R. McColgan, each claims an interest as mortgagee of the defendants Thomas Frederick Bell and Bessie M. Bell, and except that defendant W. P. Hammon and defendant F. C. Van Deinse each claims an interest in said tract as assignees of said heirs of Thomas Bell, deceased.

These defendants, and each of them, deny that the claims of the defendants having interests as aforesaid in said land are without any right whatever, or that they and each of them have not any right, title or interest in or to said tract of land, or any part or portion thereof; and they deny that the claims made by those defendants hereinbefore alleged to have an interest in said land are wrongful and unlawful and without any right whatever, or are wrongful or unlawful or without any right; and they deny that said defendants hereinbefore alleged to have an interest in said land have not any right, title

or estate or interest in or to the undivided one-half of the said tract, piece or parcel of land, or in or to any part or portion thereof.

V. These defendants, and each of them, deny that the judgment alleged in the bill of complaint to have been made and filed in the Superior Court of Santa Barbara County on the 29th day of June, 1901, in the action in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," was in the words and figures alleged and set forth in said bill of complaint; but admit that a judgment of like purport was made by the said Superior Court and filed in said action on the 29th day of June, 1901.

VI. These defendants, answering that portion of paragraph 8th which refers to the notice of appeal by George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, to the Supreme Court of the State of California, allege that the said bill of complaint does not state correctly or fully the appeal taken or the action of the Supreme Court of the State of California in disposing of the said case; but these defendants, and each of them, allege that the said notice of appeal, dated as alleged on the 8th day of July, 1901, included a notice of appeal taken to the said Supreme Court from the order of the said Superior Court made and entered on the 7th day of June, 1901, denying the motion of the said defendants George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, for a new trial of the said action; that the plaintiff in said action moved the said Supreme Court of the State of California to dismiss both of the appeals of the said defendants, to-wit: The appeal from the order denying a new trial and the appeal from the judgment; that the Supreme Court of the State of California granted the motion of the plaintiff to dismiss the appeal taken from the judgment, but denied the motion to dismiss and appeal from the order refusing a new trial.

These defendants, and each of them, deny that the

said judgment and decree of the said Superior Court upon the dismissal of the appeal from the judgment by said Supreme Court thereby became and was affirmed, and they deny that the said judgment and decree ever since has been, or remains, or still is, in full force, or in or of any force or effect whatever; and they deny that said judgment and decree was or is a final adjudication of the rights or interests of the parties to the said action in which it was rendered.

And these defendants, and each of them, further answering in respect to said judgment and decree, allege that the said appeal by the said defendants from the said Order denying their motion for a new trial, after the dismissal as aforesaid of the appeal from the judgment, came on for hearing and was heard by the said Supreme Court of the State of California, and the said Supreme Court of the State of California, on the 28th day of December, 1903, made and entered its Order and judgment whereby the Order of the said Superior Court denying the said defendants' motion for a new trial of the said action was reversed and a new trial of said action ordered; "except as to the issues covered by the 23rd Paragraph of the Findings and the following portion of the 22nd Paragraph of the Findings, to wit: 'That John S. Bell was indebted to Thomas Bell, on the 16th day of October, 1892, the day that Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15', and Paragraph '4' of the Conclusions of Law, and except as to the issues covered by the 'Additional Findings'"; that is to say, the Supreme Court, by its judgment aforesaid ordered a new trial of all the issues made by the pleadings in the said action of John S. Bell vs. George Staacke et al., except the issues relating to the indebtedness of the said John S. Bell to Thomas Bell at the date of the death of Thomas Bell. That the new trial of the said action ordered by the Supreme Court as aforesaid was had in the said Superior Court, April 19th to May 22nd, 1904, and the plaintiff therein, the said John S. Bell, and James L. Crittenden, the grantee of John S. Bell, and the grantor of the complainant U. S. Oil & Land Com-

pany, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial was ordered as aforesaid, were, by the respective parties to the said action, submitted to the said Superior Court for decision, and thereafter, to wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it was decided that a lien existed upon the tract of land described in the complaint in said action, being the same tract of land described in the bill of complaint herein, of which the complainant herein claims an undivided one-half, in favor of the said defendant Teresa Bell as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, for the payment to her, as such Administratrix, under the allegations in the cross-complaint of the defendants in said action, in the sum of \$95,901.07 and accruing interest, and that the said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the cost and expenses of said sale and the amount aforesaid of said lien; that the judgment of the said Superior Court, according to the said decision, was duly entered in said action, on the 28th day of October, 1904, to wit, judgment that there was due and owing from John S. Bell to the defendant Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, the sum of \$95,901.07, and that the said sum and the costs of the said defendant, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint of the complainant herein; and that the defendant George Staacke held the legal title to said land, in trust, first as security for the payment of the aforesaid sum of \$95,901.07 and said costs; and, second, in trust for the use and benefit of said John S. Bell; that all of said land be sold by the Commissioner appointed therein at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that

Jesse L. Hurlbut he and was appointed Commissioner of said Court to make said sale, and that said Commissioner pay out the proceeds of said sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix the said costs and the said sum of \$95,901.-07 and accruing interest, and that the plaintiff, and all persons claiming under him, be forever barred and foreclosed of and from all equity of redemption in and to said land, from and after the delivery of said Commissioner's deed, and that the purchaser of said land at said Commissioner's sale be let into possession thereof, and that, if the moneys arising from said sale be insufficient to pay the amount found due to said Administratrix, judgment for such deficiency be docketed against the plaintiff, John S. Bell. That the said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this section, in which the complainant claims an undivided one-half.

These defendants, and each of them, further allege that an appeal to the Supreme Court of the State of California was duly taken and prosecuted from the said judgment of the Superior Court made and entered as aforesaid on the 17th day of October, 1904, by the plaintiff therein, John S. Bell, and by his grantees, James L. Crittenden and Kate M. Bell, and that thereafter the said Supreme Court, on the 2nd day of January, 1906, made and entered its Order and judgment whereby the said appeal from the said judgment was dismissed. That the plaintiff, John S. Bell, in the said action, and his grantees, James L. Crittenden and Kate M. Bell, who were, as alleged in the complainant's bill of complaint herein, allowed to prosecute the said action of John S. Bell vs. George Staacke et al., in the name of the plaintiff, made a motion for a new trial of the said action, which resulted as aforesaid in the judgment entered as aforesaid on the 17th day of October, 1904, and said motion for a new trial was, by said Superior Court, denied, and an appeal from said Order denying a new trial as aforesaid was duly taken by and in the name of the said plaintiff, John S. Bell, to the Supreme Court of the

State of California; that the said Supreme Court, on the 22nd day of July, 1907, made and entered its Order whereby the said appeal from the said Order of the Superior Court, denying said motion for a new trial, was affirmed.

VII. These defendants, and each of them, deny that the Additional Findings and Conclusions of Law made and filed by the Judge of the said Superior Court on the 7th day of June, 1901, in the said action entitled "John S. Bell vs. George Staacke et al." were made or filed upon or at a special instance and request of the Attorneys of and for the defendants in said action; but allege that said Additional Findings and Conclusions of Law were, as therein stated, made by the said Court of its own motion.

VIII. These defendants, and each of them, further answering, state that it is and has been since and prior to the first day of January, 1900, the law of the State of California, when a judgment of the Superior Court of the said State has been duly made and entered in an action pending therein against the plaintiff or defendant, and the losing party has appealed to the Supreme Court of the said State from the judgment, and has moved in the said Superior Court for a new trial of the action and the motion for a new trial has been denied by the said Superior Court, and an appeal from the Order denying a new trial has been taken by the said losing party to the Supreme Court of the said State, and the appeal from the judgment has been dismissed or affirmed by the said Supreme Court, and thereafter the said Supreme Court has considered the said appeal from the Order denying a new trial and has made its judgment reversing the Order denying a new trial and ordering a new trial, the effect of the said judgment of the Supreme Court reversing the Order denying a new trial and ordering a new trial of the action is to vacate and set aside the said judgment, and that, thereupon, the action remains pending in said Superior Court for the re-trial, to all intents and purposes as if no previous trial had been had or prior judgment entered.

IX. These defendants, and each of them, deny that the time to serve and file any notice of intention to move for a new trial in the said action entitled "John S. Bell vs. George Staacke et al." after the decision therein made by the said Superior Court on the 6th day of March, 1901, expired on or about the 17th day of June, 1901; but these defendants, and each of them, allege that notice of intention to move for a new trial in said action, after the said decision of the said Court made on the 6th day of March, 1901, was duly made, served and filed thereafter, within ten days, by the defendants in said action, after service of notice upon them of the making and filing of the said decision. And these defendants, and each of them, deny that the Findings of Fact and Conclusions of Law, and the decision of the said Superior Court in said action of John S. Bell vs. George Staacke et al., became, on the 9th day of July, 1901, or ever since have been, final, conclusive and binding, or final or conclusive or binding upon all the parties to the said action, or upon their successors in interest, or upon each or all or any of the heirs of said Thomas Bell, deceased; and they, and each of them, deny that the jurisdiction and power of the said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever or ceased to exist; and they, and each of them, deny that the said Superior Court, or the Supreme Court of the State of California, or any Appellate Court of the said State, ceased to have any jurisdiction to entertain or hear or pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any Order made on any such notice or motion, or to modify, alter or change, in any way or manner or respect, said judgment of said Superior Court. These defendants, and each of them, deny that the Order and judgment of the Supreme Court, made on the 16th day of September, 1902, by which the appeal taken by the defendants in the said action entitled "John S. Bell vs. George Staacke et al.", was dismissed, has never been modified, vacated or set aside; but these defendants, and each of them,

state and allege that the judgment of the said Supreme Court thereafter made on the appeal of the said defendants from the Order of the Superior Court denying their motion for a new trial, by which the Order of the said Superior Court denying a new trial was reversed and a new trial in said action ordered, did, in its effect, vacate, set aside and render of no effect the judgment of the said Superior Court theretofore entered.

X. These defendants, and each of them, deny that the said George Staacke ever made or executed to James L. Crittenden and Catherine M. Bell, or delivered, on the 9th day of July, 1901, or at any other time, to C. A. Hunt as County Clerk of the said County of Santa Barbara, or as Clerk of said Superior Court, any deed of conveyance under or in accordance with the judgment and decree made and filed in said action of John S. Bell vs. George Staacke et al., on the 29th day of June, 1901, whereby said George Staacke granted and conveyed and transferred to the said James Crittenden, in fee simple or otherwise, an undivided one-half of all said tract of land containing 10,067.2 acres; but these defendants, and each of them, allege that, when the defendants in the said action of John S. Bell vs. George Staacke et al. appealed to the Supreme Court from the judgment therein made and filed on the 29th day of June, 1901, and from the Order of the said Superior Court denying the motion of the defendants for a new trial, they were required, under and by the laws of the State of California, in order to obtain a stay of execution of that part of the judgment from which they had appealed as aforesaid, to make and deposit with the Clerk the deed of conveyance required by the said judgment and decree to be executed, and a deed of conveyance such as the said judgment required to be made and executed by the said George Staacke to the said James L. Crittenden and Catherine M. Bell was, by the said defendants so appealing, procured to be made, and was made and duly acknowledged by the said George Staacke and delivered to the said C. A. Hunt as the Clerk of the said Superior Court, for the purpose of complying with the require-

ment of the law as aforesaid, in order to obtain a stay of the execution of the said judgment from which the appeal as aforesaid was taken. And these defendants, and each of them, deny that the said deed of conveyance, made and acknowledged as aforesaid, was delivered to the said C. A. Hunt, as such Clerk, for James L. Crittenden or Catherine M. Bell, or for the benefit of them or either of them; and these defendants, and each of them, deny that the said deed of conveyance was an absolute grant, deed, transfer and conveyance of the title in fee of, in and to said tract, piece and parcel of land of 10, 067.2 acres to said James L. Crittenden and Catherine M. Bell; and these defendants, and each of them, deny that the said deed of conveyance vested unto said James L. Crittenden and Catherine M. Bell an undivided one-half of said land, or of each or any part thereof, or that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901, or ever, or at all.

XI. These defendants, and each of them, deny, upon information and belief, that the said U. S. Oil & Land Company was duly created or organized under and by virtue of the laws of the Territory of Arizona; and these defendants, and each of them, deny, upon information and belief, that the U. S. Oil & Land Company ever had its principal place of business outside of the Territory of Arizona and in the City and County of San Francisco; and they deny upon information and belief that the U. S. Oil & Land Company was such corporation, or any corporation, on the 18th day of September, 1902; and they deny, upon information and belief, that the U. S. Oil and Land Company had, for a long time, or for any time, prior to the 18th day of September, 1902, or has ever since, been a corporation, or is now a corporation, existing by or under the Constitution and laws of the State of Arizona.

XII. These defendants, and each of them, deny, upon information and belief, that James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration, sold, granted, transferred and conveyed, in fee

simple or otherwise, to the U. S. Oil & Land Company an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; but these defendants, and each of them, allege, upon like information and belief, that the said deed of conveyance from James L. Crittenden and Nina D. Crittenden to the U. S. Oil & Land Company was made without any consideration moving from the said grantee; and these defendants, and each of them, on like information and belief, deny that, on the 5th day of July, 1910, for a valuable consideration, or any consideration, the U. S. Oil & Land Company sold, granted, transferred and conveyed, in fee simple or otherwise, an undivided one-half of said 10,067.2 acres tract of land to the San Luis Land and Improvement Company by good and sufficient deed; and they deny, upon like information and belief; that the San Luis Land and Improvement Company is, or ever was, a corporation.

XIII. These defendants, and each of them, further answering, state and allege that, within the time provided by law, after the said Findings of Fact and Conclusions of Law in said action of John S. Bell vs. George Staacke et al. were made and filed on March 6th, 1901, as alleged in the bill of complaint, the defendants in said action, to wit, said George Staacke and Teresa Bell as the Special Administratrix of the Estate of Thomas Bell, deceased, made, served and filed in said action their notice of intention to move for a new trial of said action, and thereafter, in due course of law, the said defendants made and submitted to said Court their motion for a new trial of said action, which motion was by said Court thereafter, to-wit, on June 7th, 1901, by an order duly entered in the minutes of said Court, denied. That thereafter, to-wit, on June 29th, 1901, said defendants made and served upon the plaintiff in said action, and filed with the Clerk of said Court, their notice of appeal to the Supreme Court of the State of California from the said order of the Court denying their said motion for a new trial of said action; and thereafter, in due time, said defendants made and filed in said action a

sufficient and proper undertaking on their said appeal. That thereafter, in due time, said defendants filed in said Supreme Court their transcript of record on appeal from said order denying their said motion for a new trial. That thereafter the questions and matters involved in said appeal were argued by the respective parties and submitted to the said Supreme Court for decision. And thereafter the said Supreme Court, to-wit on the 28th day of December, 1903, made and entered its judgment and order in said action, reversing the said order of the Superior Court denying said motion of said defendants for a new trial, except as to the issues involving the indebtedness of John S. Bell to Thomas Bell, and ordering a new trial of all issues in said action except those relating to the said indebtedness of John S. Bell to Thomas Bell.

These defendants, and each of them, further state and allege that said order and judgment of reversal has never been vacated or set aside; that the new trial ordered by the Supreme Court as aforesaid was had in said Superior Court, April 19th, 1904, to May 2nd, 1904; that the plaintiff, John S. Bell, and his grantees, the said James L. Crittenden and Catherine M. Bell, appeared, submitted to the jurisdiction of the Court, and participated in said new trial, to-wit, they introduced and submitted to the Court on said new trial all the evidence that they had introduced and submitted on the former trial of said action and more. That, thereafter, all the issues in said action, as to which a new trial was ordered as aforesaid, were by the respective parties submitted to the said Superior Court for decision; and thereafter, to-wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it decided that a lien existed upon the tract of land described in the bill of complaint herein and in the complaint and cross-complaint in said action of John S. Bell vs. George Staacke et al. in favor of the said defendant Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, for the payment to her, as such Administratrix, of the sum of

\$95,901.07 and accruing interest, and that said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the costs and expenses of said sale and the amount aforesaid of said lien. That judgment according to said decision was duly entered in said action on the 28th day of October, 1904, to-wit, judgment that there was due and owing from John S. Bell, the plaintiff, to Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, the sum of \$95,901.07, and that said sum of \$95,901.07 and the costs of said defendants, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint in this action, and that the defendant George Staacke held the legal title to said land in trust, first, as security for the payment of the aforesaid sum of \$95,901.07 and said costs, and second, in trust for the use and benefit of said John S. Bell; that all said land be sold by the Commissioner therein appointed at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale; that said Commissioner pay out of the proceeds of such sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix, the said costs and the said sum of \$95,901.07 and accruing interest; that the plaintiff and all persons claiming under him be forever barred and foreclosed of and from all equity of redemption in and to said land from and after the delivery of said Commissioner's deed; that the purchaser of said land at said Commissioner's sale be let into possession thereof; and that, if the moneys arising from said sale be insufficient to pay the amount found due said Administratrix, a judgment for such deficiency be docketed against the plaintiff John S. Bell. That said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this action, and in which the plaintiff claims an undivided one-half interest.

That said Commissioner duly qualified, as required by the law and the said judgment. That the said judgment has never been vacated, set aside, modified or reversed, and the same became final and conclusive upon the parties to the said action and their assigns. That, on the — day of February, 1906, an order of sale was issued out of said Superior Court, upon said judgment and under the seal of said Court, to the said Commissioner, commanding him to sell the said tract of land in said judgment and order of sale described, accordingly as adjudged and directed by said judgment; and the said Commissioner, in pursuance of said judgment and said order of sale, did, on March the 5th, 1906, after due and legal notice given according to law, sell at public auction, at the place and hour required by law, the said tract of land and all thereof, to the highest bidder, to-wit, to said Teresa Bell, as the said Administratrix of the Estate of Thomas Bell, deceased, for the sum and amount due her by said judgment, together with said costs and the fees of said Commissioner, and all costs and expenses of said sale; and the said Commissioner thereupon, and on said 5th day of March, 1906, executed and delivered to said purchaser his certificate of said sale, and on the same day filed for record in the office of the County Recorder for said Santa Barbara County a duplicate of said certificate of sale. That thereafter, to-wit, on the 8th day of April, 1907, there having been no redemption of said lands or of any part or portion thereof, the said Commissioner made, executed and delivered to said purchaser, to-wit, the said Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, a deed of conveyance of all said tract of land, and said Administratrix thereupon immediately entered into the possession of all said land, except the ranch residence, one corral and the garden, and about thirty-five acres surrounding said residence, which said residence and garden, corral and surrounding thirty-five acres were, until January 14th, 1911, occupied by said John S. Bell and his wife, Kate M. Bell, when said Administratrix recovered possession thereof by writ of assist-

ance issued in said Superior Court in favor of said Teresa Bell as such Administratrix; and said Administratrix has ever since continued in the possession of the said lands and all thereof. That the said Administratrix, after the delivery of said certificate of sale to her as aforesaid, to-wit, on March 16th, 1906, notified all the tenants of said John S. Bell, and of his grantees, the said James L. Crittenden and Catherine M. Bell, alias Kate M. Bell, and the U. S. Oil & Land Company, of the fact that she held said certificate of sale, and demanded of said tenants the rents of said lands, and the said tenants and each and all thereof attorned to said Administratrix and paid to said Administratrix all the rents of said land falling due thereafter, to-wit, the rents of all said tract of land, except of the ranch residence and small portion of the land occupied as aforesaid by John S. Bell and his said wife; and said Administratrix ever since has been in the quiet and peaceable possession of all that portion of said tract of land occupied by said tenants who attorned to her as aforesaid.

These defendants, and each of them, further answering, deny that the said Superior Court in and for the County of Santa Barbara, or the Judge of said Court, in that action wherein Kate M. Bell et al. were plaintiffs and the San Francisco Savings Union et al. were defendants, being action No. 4424 in said Court, ever made the decision in the words and figures as alleged in paragraph 10th of complainant's bill of complaint. These defendants, and each of them, admit that the said Court, after a trial of the issues raised by the pleadings in said action No. 4424, on March 14th, 1905, made and filed its decision consisting of Findings of Fact and Conclusions of Law; but they deny that the facts were found as alleged in paragraph 10th of said bill of complaint; and these defendants, as and for a part of their answer, refer to the said decision and the judgment in said action and make the same and each and all thereof a part of this their answer to the complainant's bill of complaint.

These defendants, and each of them, deny that said

Teresa Bell, as Administratrix or otherwise, ever appealed to the Supreme Court of California from the judgment entered in said action No. 4424; but they admit that said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, appealed from a portion of said judgment, to-wit, from all thereof except that portion which adjudged that the plaintiffs Kate M. Bell and James L. Crittenden and defendant to cross-complaint, U. S. Oil & Land Company, jointly and severally, take nothing by said action.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix or otherwise, voluntarily paid to the said Mercantile Trust Company and San Francisco Savings Union or to either, the sum of \$179,400.40, or any part thereof, but allege that said sum of \$179,400.40 was paid to the San Francisco Savings Union on June 15th, 1908, upon an order of Court as hereinafter alleged, and that, long prior to that date, to-wit, on the 6th day of March, 1907, the said Estate of Thomas Bell, deceased, had become and ever since remained the owner of the said parcel of land containing 10,067.2 acres, by deed of conveyance by the Commissioner appointed to sell said land under the decree and order of sale entered in said action of John S. Bell vs. George Staacke et al, to said Teresa Bell, as such Administratrix, as hereinbefore in this answer alleged.

These defendants, and each of them, state and allege that, prior to making the payment of said \$179,400.40, to-wit, on the 12th day of June, 1908, the Superior Court of the City and County of San Francisco, State of California, made and entered its order and judgment in the matter of the said Estate of Thomas Bell, deceased, whereby it ordered and adjudged that Teresa Bell as such Administratrix pay from the money and funds of the said Estate the sum of \$179,411.40 to said San Francisco Savings Union, in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said Estate and in satisfaction of the said judgment entered in said action No. 4424.

These defendants, and each of them, allege that the said sum of \$179,400.40 was paid by said Teresa Bell as such Administratrix from the moneys and funds of said estate, in accordance with the said judgment and order of said Superior Court in and for the City and County of San Francisco, and in accordance with said judgment entered in said action No. 4424, and to redeem the property of said estate, to-wit, said parcel of land of 10,067.2 acres, from the lien of said judgment entered in said action No. 4424; and the said San Francisco Savings Union, upon its receipt of the said sum of \$179,411.40, made, executed and delivered to said Teresa Bell, as such Administratrix, a deed of re-conveyance of all the land embraced in its said mortgage, to-wit, the 4000 acre tract and the said tract of 10,067.2 acres.

These defendants, and each of them, deny that said payment made as aforesaid by said Teresa Bell as such Administratrix was made with the intent, object and design, or with the intent, or object, or design, of depriving plaintiff of its right and interest, or right or interest, of, in and to, or of, or in, or to said undivided one-half of 10,067.2 acres of land, or of any part or portion thereof, or of its right, interest and equity, or right or interest or equity, in and to, or in or to, such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company under said judgment in said action No. 4424.

XIV. These defendants, and each of them, deny that the said Teresa Bell, as Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, has volunteered to pay to the defendant the Mercantile Trust Company of San Francisco and to the defendant San Francisco Savings Union, or to either of them, the sum of \$179,411.40; but these defendants, and each of them, allege that the said Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, acting under and in accordance with an order made by the said Superior Court of the said City

and County of San Francisco, in the matter of the Estate of Thomas Bell, deceased, paid to the defendant the San Francisco Savings Union the sum of \$179,411.40; that the said sum of \$179,411.40 was the amount ascertained and adjudged to be due the said San Francisco Savings Union by said Superior Court in said action No. 4424, referred to in the bill of complaint of the complainant herein, in the decree of foreclosure made and entered by the said Superior Court in the said action upon the cross-complaint of the defendants therein, foreclosing a mortgage which the said San Francisco Savings Union held as security for the payment of the said sum last mentioned, upon two certain tracts of land situate in the County of Santa Barbara, State of California, one of which tracts was described in the said judgment of foreclosure as containing 4000 acres, and the other was described in said judgment of foreclosure as containing 10,067.2 acres, the latter tract being the same tract or parcel of land in which the complainant herein, in its bill of complaint, claims an undivided one-half; that the said tract of 4000 acres was the property of the said Thomas Bell, deceased, at the date of his death, and remained as the property of his estate at the time the said decree of foreclosure aforesaid was entered; that, at the time the said decree of foreclosure was entered, the said other tract of land, to-wit, the said tract of land containing 10,067.2 acres, had become and was the property, as hereinbefore alleged, of the Estate of Thomas Bell, deceased; that the Estate of Thomas Bell, deceased, owning the said tract of land containing 10,067.2 acres, was entitled to have the judgment aforesaid of the said Superior Court foreclosing the said mortgage and directing the sale of both said tracts paid and satisfied with the moneys of the said estate, and the costs and expenses of foreclosure sale thereby saved, and to that end and for that purpose, the order aforesaid of the said Superior Court of the City and County of San Francisco having charge of the settlement of the Estate of Thomas Bell, deceased, made its order aforesaid directing the said Teresa Bell, as

the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to pay from the moneys of the said estate the amount aforesaid of \$179,411.40, due under the said judgment of foreclosure, to the said San Francisco Savings Union.

XV. These defendants, and each of them, deny that the making and execution of the said re-conveyance by the said Mercantile Trust Company and the San Francisco Savings Union was contrary to, or in violation of, the judgment in said action No. 4424, or of any of its provisions, or of any trust therein adjudged or declared; and they and each of them deny that the said re-conveyance was wrongful, fraudulent and unlawful, or wrongful or fraudulent or unlawful or in violation of any rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424, or at all, or under said judgment dated June 29th, 1901; these defendants, and each of them, deny that the said transfer by said Mercantile Trust Company of San Francisco to Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to-wit, the said re-conveyance, was made under or in pursuance of any combination and conspiracy, or combination or conspiracy, entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful and fraudulent intent, object, purpose and design, or wrongful or unlawful or fraudulent intent or object or purpose or design, to defraud the said U. S. Oil & Land Company out of any right, title or interest in said 10,067.2 acres of land, or out of any right of the said U. S. Oil & Land Company, title or interest in or to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid; and they and each of them deny that the said U. S. Oil & Land Company had any right, title or interest whatever, at the date of the said re-conveyance by the said San Francisco Savings Union and the said Mercantile Trust Company, in the said tract of 10,067.2 acres of land, or in any part or portion thereof; and

they and each of them deny that the said transfer, to-wit, the said re-conveyance made by the said Mercantile Trust Company and the San Francisco Savings Union, was made with any intent or purpose to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424; and they and each of them deny that the said transfer was made secretly or in pursuance and execution of any combination or conspiracy, or with any fraudulent intents, objects, purposes or designs whatever; and these defendants, and each of them, deny that the said Teresa Bell, the Mercantile Trust Company and the San Francisco Savings Union knew, or that each or any of them knew, at the time of the said transfer and of the payment of the said sum of \$179,400.40, that said tract of land of 10,067.2 acres was worth, and of the value of, at least \$500,000, or of any greater value than \$100,000, or that they knew that the development of oil near or adjoining said lands made them prospectively worth \$1,000,000 or more; they and each of them deny that the said transfer was a fraud upon the U. S. Oil & Land Company and contrary to, or in violation of, the said decree in said action No. 4424; they and each of them deny that the defendants in this action wrongfully and unlawfully, or wrongfully or unlawfully claim and assert, or claim or assert, that the said deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell as such Administratrix the title of, in and to said tract of land consisting of 10,067.2 acres; and they and each of them deny that the said claim of the defendants in this action was without merit or wrongful or unlawful or contrary to, or in conflict with, said judgment in said action No. 4424, or a fraud upon the complainant in this action, or was or is made with the wrongful or fraudulent or unlawful intents, purposes or designs of defrauding the said U. S. Oil & Land Company, or its successors or grantees, out of its interest in or title to an undivided one-half of said 10,067.2 acres of land; they and each of them deny that the said Mercantile Trust Company was required, in or by said decree in

said action No. 4424, to advertise the said 10,067.2 acres of land, or sell or offer for sale the same when the money due the San Francisco Savings Union, under the provisions of the judgment in said action No. 4424, was tendered to and paid to the said San Francisco Savings Union by the owner of the lands described in said judgment of foreclosure; and they and each of them deny that the said Mercantile Trust Company has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424, or has attempted to transfer and dispose of the said tract of 10,067.2 acres of land contrary to, or in violation of, any trust declared or set forth in said decree in said action No. 4424, or with any wrongful or unlawful or fraudulent intents, objects, purposes or designs whatever; these defendants, and each of them, deny that the said George Staacke had any right, title or interest whatever in or to the said 10,067.2 acres of land, or in or to any portion thereof, at the time of the rendition of the said judgment in the said action No. 4424.

XVI. These defendants, and each of them, deny, upon information and belief, that the San Luis Land and Improvement Company is a corporation, and deny, upon like information and belief, that the San Luis Land and Improvement Company, for a valuable consideration sold, granted, transferred and conveyed, in fee simple or otherwise, to the complainant U. S. Oil & Land Company, by good and sufficient deed and conveyance, or otherwise, an undivided one-half of said 10,067.2 acres of land; and these defendants, and each of them, allege upon information and belief, that the San Luis Land and Improvement Company and the said U. S. Oil & Land Company, and each thereof, are fictitious and sham corporations, and have no property, organization or identity, except the name; and these defendants, and each of them, allege, upon information and belief, that a name and semblance of organization was given the said U. S. Oil & Land Company and the San Luis Land and Improvement Company by James L. Crittenden, the grantee of the said John S. Bell, and

that the said James L. Crittenden has used the names U. S. Oil & Land Company and San Luis Land and Improvement Company whenever it suited his purpose to make or assert any claims upon or in reference to the said 10,067.2 acres; and these defendants, and each of them, allege, upon information and belief, that the said James L. Crittenden is the actual complainant in this action, and that he is using the name U. S. Oil & Land Company for the complainant instead of his own.

XVII. These defendants, and each of them, have no information or belief on the subject sufficient to enable them to answer the allegations made upon pages 105, 106 and 107 of the bill of complaint herein to the effect that John S. Bell, on the 22nd day of December, 1906, for a valuable consideration, conveyed to Catherine M. Bell the said tract of 10,067.2 acres, and that said John S. Bell and Catherine M. Bell, on the 12th day of June, 1897, for valuable consideration, conveyed to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract of land, and that, on the 7th day of March, 1899, for a valuable consideration, the said Sidney M. Van Wyck, Jr., conveyed to James L. Crittenden all his right, title and interest in said tract of land; and, basing their denial upon that ground, they and each of them deny that the said tract of land of 10,067.2 acres or any part thereof, or any interest therein, was ever, for a valuable consideration, or for any consideration, sold, transferred or conveyed by deed of conveyance, or otherwise, by John S. Bell to Catherine M. Bell, or John S. Bell and Catherine M. Bell to James L. Crittenden, or by James L. Crittenden and Nina D. Crittenden to U. S. Oil & Land Company, or by John S. Bell to James L. Crittenden and Sidney M. Van Wyck, Jr., or by Sidney M. Van Wyck, Jr. to James L. Crittenden; and these defendants, and each of them, deny that any deeds of conveyance have been executed and recorded by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., and James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company and San Luis Land and Improvement Company,

or any of them, which granted and conveyed an undivided one-half of said tract of 10,067.2 acres of land.

XVIII. These defendants, and each of them, deny that the said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge, at any time, of any title or interest of the complainant in or to an undivided one-half of said 10,067.2 acres of land, or that they, or that either of them, at any time, had any notice or knowledge that the said tract of land had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener for the benefit of John S. Bell, or that John S. Bell was then the owner thereof, or that said Grover and Rosener had, on and prior to March 7th, 1889, agreed to convey said tract of land to said John S. Bell, or that said George Staacke paid no consideration whatever for said tract of land, or that said George Staacke received and executed said deed of conveyance and held the title to said tract of land as trustee.

These defendants, and each of them, deny that George Staacke received and accepted any deed of conveyance by Dwight W. Grover and Samuel Rosener and held the title to said 10,067.2 acres of land as trustee for the benefit of John S. Bell, from the time he received the same to the time of his death, or for or during any time whatever; and deny that the deed of conveyance by said Howard to said Harshbarger was made with the or any fraudulent or unlawful intent, object or purpose or design, to defeat any trust upon which said land had been conveyed by said Grover and Rosener to said George Staacke, or to deprive the plaintiff or the successors in interest of John S. Bell of the benefits of any trust or of their rights thereunder.

These defendants, and each of them, deny that each and all of the defendants in this action, or that any of them, ever had any notice that the judgment alleged to have been made and filed on the 29th day of June, 1901, in the action entitled "John S. Bell vs. George Staacke et al.," was a valid, subsisting or final judgment, or that the Findings made and filed in said action, March

6th, 1901, were valid, conclusive or final, or of any right, title or interest of the complainant of, in or to an undivided one-half of said tract of 10,067.2 acres of land.

These defendants, and each of them, deny that the defendants W. P. Hammon and F. C. Van Deinse did, on or about the 1st day of June, 1911, or at any time, wrongfully or unlawfully enter upon a portion of said lands, or bore a well for the purpose of extracting oil from said land, with the wrongful and unlawful intent, object, purpose and design, or that the complainant suffered any loss thereby or was damaged or injured thereby; and deny that the defendants W. P. Hammon and F. C. Van Deinse threaten or are about to bore, or cause to be bored, other wells, with any wrongful and unlawful intent, object, purpose and design; and deny that the extraction of oil from said land, of the sale thereof, by said Hammon or Van Deinse, or both, will damage or injure the complainant.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix, or otherwise, wrongfully or unlawfully claims or asserts that she has acquired title to said 10,067.2 acres of land, and deny that the complainant is, or ever was, entitled to any of the rents, issues or profits of said land, or of any part thereof; and deny that the appropriation by Teresa Bell, as such Administratrix, of any or of all the rents, income and profits of said land will cause any loss, injury or damage to the complainant.

XIX. These defendants, and each of them, deny that, on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company, and San Francisco Savings Union combined and conspired together, and made and entered into a secret combination and conspiracy, or combination, or conspired together, or made or entered into a secret combination or conspiracy, to evade and defeat, or evade or defeat, the decree in said action No. 4424, or to deprive the complainant of any right, title or interest in or to an undivided one-half of said tract of 10,067.2 acres of land, or of any interest in, or part of the pro-

ceeds that might be obtained by a sale of said land, or that they did, in pursuance of said alleged combination and conspiracy, or with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of any right, title and interest in and to an undivided one-half of said tract of land, or any product of the sale thereof under said decree, have and cause said deed dated May 26th, 1908, to be made and executed and recorded; and deny that said deed dated May 26th, 1908, was made by said Mercantile Trust Company and San Francisco Savings Union, or by either of them, under or in pursuance of, or execution of, any wrongful or unlawful combination or conspiracy, or in pursuance or execution of any conspiracy or combination whatever.

These defendants, and each of them, deny that C. A. Hunt has in his possession or under his control the deed of conveyance made and executed by George Staacke to Catherine M. Bell and James M. Crittenden; and these defendants, and each of them, allege that the said deed of conveyance has served the purpose for which it was executed and deposited with said Clerk of the Court, as hereinbefore in this answer alleged, and is now of no effect or validity.

XX. Answering further, these defendants, and each of them, allege that each and every claim and all the right, title and interest that the complainant herein ever had or asserted against, in, or to the said tract of 10,067.2 acres of land were disposed of against the complainant and its grantors by the final judgments of the Superior Court of the State of California, in and for the County of Santa Barbara, in the said two actions entitled "John S. Bell vs. George Staacke et al." and "Kate M. Bell, John S. Bell and James L. Crittenden, et al., vs. San Francisco Savings Union et al.," respectively, and by the sale under the foreclosure decree and order of sale issued thereon in the said action entitled "John S. Bell vs. George Staacke et al.," as hereinbefore in this answer alleged; but, notwithstanding that

the said claims and asserted rights and interests of the complainant in and to the said tract of 10.067.2 acres were finally adjudicated, determined and disposed of, as hereinbefore alleged, against the complainant, the said complainant has continued to assert the said claims and harass the defendants in this action by bringing suit after suit upon said claims in the said Superior Court of the State of California, in and for the County of Santa Barbara, to-wit, the said U. S. Oil & Land Company, by its Attorney James L. Crittenden, commenced an action in the said Superior Court on the 9th day of March, 1910, against these defendants and the other defendants named herein, by filing a complaint therein which asserted substantially the same alleged cause of action as is asserted by the bill of complaint herein, and in which the same relief was asked and as is prayed for in the bill of complaint herein; that these defendants appeared in said action in the said Superior Court and made, served and filed their answer therein on the 9th day of April, 1910, and caused the said action to be set for trial on a day certain by the said Superior Court, at the City of Santa Barbara, State of California, to-wit, on the — day of —, 1910; that, on said day that the said action was set for trial as aforesaid, these defendants, by their counsel, appeared in said Court ready for trial; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said U. S. Oil & Land Company, by its attorneys the said James L. Crittenden and Richards and Carrier, filed and procured to be entered in the Clerk's office of said Court a dismissal of the said action; that the action so dismissed was numbered 7480 of said Superior Court.

That the said U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards and Carrier, on the 4th day of March, 1911, began another action against these defendants and the other defendants named in the bill of complaint herein, by filing a complaint in the Clerk's office of the said Court, which complaint set forth and alleged the same cause of action as was alleged in the previous action, to-wit, in the action

No. 7480, and as is alleged in the bill of complaint herein. Said second action in said Superior Court was numbered 7787. That these defendants entered their appearance in the said action No. 7787 in the said Superior Court, and filed therein, on the 29th day of July, 1911, their answer, which answer set up the defense of res judicata in the final judgments in the said actions entitled "John S. Bell vs. George Staacke et al.," and "Kate M. Bell et al. vs. San Francisco Savings Union et al.," and the sale and conveyance of said tract of 10,067.2 acres under the decree and order of sale in the action entitled "John S. Bell vs. George Staacke et al.," and these defendants thereupon caused the said action No. 7787 to be set for trial on a day certain by said Superior Court, to-wit: on the 17th day of October, 1911; that on the said 17th day of October, 1911, these defendants appeared in the said Superior Court, at the City of Santa Barbara, ready for the trial of said action; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said attorneys for the said U. S. Oil & Land Company filed, in the name of said U. S. Oil & Land Company, in said Court, a dismissal of the said action and caused such dismissal to be entered; that the defense of these defendants interposed to said action No. 7787 in said Superior Court was the same as the defense interposed as aforesaid in said action No. 7480 of said Superior Court.

These defendants, and each of them, upon information and belief, allege that the U. S. Oil & Land Company named as complainant herein is not a corporation, but is given the name and semblance of a corporation by the said attorneys James L. Crittenden and Richards and Carrier.

XXI. These defendants, and each of them, further answering, state and allege that the cause of action alleged in the bill of complaint, and each and all of the matters alleged therein as ground for relief, are stale and are barred by the Statutes of Limitation.

Wherefore these defendants, and each of them, having fully answered the bill of complaint, pray that the

Court will ascertain and determine that the complainant is not entitled to any relief; that decree be entered dismissing the said bill of complaint; that the Court make its decree in favor of these defendants and of each of them; enjoining the complainant and its attorneys, the said James L. Crittenden and the said Richards and Carrier, and each and all of its agents, from bringing any other or further action or actions or proceedings upon any of the matters alleged and complained of in the bill of complaint; and that these defendants recover their costs; and that the Court will grant unto these defendants, and to each of them, such other or further relief as they may be entitled to in the premises.

W. E. Bell, also known as Eustace Bell,
Defendant.

Peter J. Crosby,
Solicitor for said defendants Thomas Frederick Bell;
Bessie M. Bell, wife of Thomas Frederick Bell, also
known as Elizabeth M. Bell; W. E. Bell, also known
as Eustace Bell; Reginald Bell, John Lewellyn Au-
zerais, and Peter J. Crosby.

State of California, City and County of San Fran-
cisco, ss.

W. E. Bell, also known as Eustace Bell, being duly
sworn, deposes and says:

That he is a defendant in the above entitled cause:
that he has heard read the foregoing answer to the bill
of complaint, and knows the contents thereof; that the
same is true of his own knowledge, except as to matters
therein stated upon information and belief, and as to
those matters he believes it to be true.

Subscribed and sworn to before me this 31st day of
May, 1912.

W. E. Bell, also known as Eustace Bell.

Edith W. Burnham,

Notary Public in and for the City and County of San
Francisco, State of California.

(Seal)

(Endorsed.) Filed June 3, 1912. Wm. M. Van
Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

The joint and several demurrers of the above named defendants, W. P. Hamman and F. C. Van Deinse, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer sheweth:

That the said complainant has not made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants, respectively.

Wherefore, and for divers other good causes of demurrer, these defendants, respectively, demur to the said bill of complaint and humbly demand the judgment of this Court whether they or either of them shall be compelled to make any further or other answer thereto.

Chauncey S. Goodrich,

Solicitor for said Defendants.

Northern District of California, City and County of San Francisco, ss.

A. E. Boynton makes solemn oath and says: That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W. P. Hammon and F. C. Van Deinse, another of the defendants above named, are at the present time without the United States and in Europe, and for that reason affiant makes this affidavit on behalf of the said W. P. Hammon; and affiant further says that the foregoing demurrer is not interposed for delay and that the same is true in point of law.

A. E. Boynton.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

Anne F. Hasty,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Chauncey S. Goodrich.

Service of the within demurrer, and receipt of a copy thereof, is hereby admitted this 3rd day of June, A. D. 1912.

Richards & Carrier, James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel.

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard as the Executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto,

confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

June 25, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this twenty-sixth day of June, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 26th day of June, 1912, at and in said City and County of San Francisco.

Flora Hall,
Notary Public in and for the City and County of San
Francisco, State of California.
(Seal)

(Endorsed.) Filed June 27, 1912. Wm. W. Van
Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell and also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

June 25, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this twenty-sixth day of June, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above-named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred Crittenden.

Subscribed and sworn to before me this 26th day of June, 1912, at and in said City and County of San Francisco.

Flora Hall,
Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 27, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Answer of Defendant Associated Oil Company to the Bill of Complaint of the U. S. Oil & Land Company.

This defendant Associated Oil Company now, and at all times, saving and reserving unto itself all and all manner of benefit and advantage of exception that can or may be had or taken to the manifold errors, inaccuracies and insufficiencies in the said Bill of Complaint contained, for answer thereunto, or to so much and such parts thereof as it is advised it is material or necessary to make answer unto, answering, says:

I. This defendant denies upon information and belief that the complainant is the owner in fee simple absolute of an undivided one-half, or of any part, or of all or any part of that certain tract, piece and parcel of land, situate, lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, in said Bill of Complaint described.

II. This defendant admits that it claims and asserts an estate or interest in said tract, piece and parcel of land adverse to the complainant, but denies that said claim is without any right whatever, or that this defendant has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece and parcel of land, or in or to any part or portion thereof.

III. This defendant, further answering, denies on information and belief that the judgment rendered by the Superior Court of the County of Santa Barbara, State of California, on the 29th day of June, 1901, in the action then pending in said Superior Court, entitled

"John S. Bell, plaintiff, vs. George Staacke and J. W. C. Maxwell, executors of the will of Thomas Bell, deceased, et al., defendants," is still in full force, or at all in force, or that said judgment is a final adjudication of the rights and interest, or rights or interest of the parties to said action in which it was rendered and entered, or that the findings of fact or conclusions of law, or the decision of said Superior Court in said action of John S. Bell vs. George Staacke et al. on the 9th day of July, 1901, became or that same, or any thereof, ever since have been final or conclusive or binding upon all or any of the parties to said action, or their or any of their successors in interest, or upon each, any or all of the heirs of said Thomas Bell, deceased, or that the jurisdiction or power of said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever, or at all, or then or at all ceased to exist, or that the said Superior Court, or any or all Appellate Courts of the State of California, or the Supreme Court of the State of California lost or ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court.

IV. This defendant further answering, denies on information and belief that the payment alleged in the eleventh paragraph of said Bill of Complaint to have been made by said Teresa Bell, as administratrix with the Will annexed of the Estate of said Thomas Bell, deceased, to said San Francisco Savings Union and said Mercantile Trust Company of San Francisco, was made with the intent, object, purpose or design of depriving the complainant of its right or interest in or to said undivided one-half of said 10,067.2 acres of land, or of its right, interest or equity in or to such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco under

and in accordance with said judgment and decree in said action No. 4424; or that with such intent, purpose, object or design, or to obtain an unfair or unconscionable advantage over this complainant, the said Teresa Bell upon making such payment of \$179,411.40, obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union, or either of them, the instrument in writing mentioned in said eleventh paragraph of said Bill of Complaint, or that the making or execution of said instrument was contrary to or in violation of said judgment in said action No. 4424, or of the provisions of said judgment, or of the trust therein adjudged and declared, or was wrongful, or fraudulent or unlawful, or in violation of the rights or interest of the complainant herein, or that said intended sale or transfer by said Mercantile Trust Company of San Francisco was made under or in pursuance of a combination or conspiracy entered into by the said Mercantile Trust Company, the said San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful or fraudulent intent, object, purpose or design to defraud said complainant out of its right, title or interest in said 10,067.2 acres of land, or out of its right, title or interest in and to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or to evade or defeat the provisions of said judgment and decree in said action No. 4424, requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, or that said intended sale or transfer was made in pursuance or execution of the said alleged combination or conspiracy, or with the fraudulent intents, objects, purposes, or designs aforesaid, or that said intended sale or transfer was a fraud upon said complainant or contrary to or in violation of said decree in said action No. 4424, or that this defendant wrongfully or unlawfully claims or asserts that the said deed and conveyance of May 26th, 1908, transferred or vested in said Teresa Bell, as such administratrix, the title of, in, or to said

tract of land, consisting of 10,067.2 acres, or that any claim made by this defendant is without merit, wrongful or unlawful or contrary to and in conflict with said judgment in said action No. 4424, or a fraud upon this complainant, or that any claim made by this defendant was or is made with any wrongful, fraudulent or unlawful intent, purpose or design, or with any intent, purpose or design to defraud the said complainant or its successors or grantees out of its interests in or title to an undivided one-half of said 10,067.2 acres of land, or that said George Staacke had no other right, title or interest in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of Trustee for the benefit of the complainant herein, or its successors or assigns, or that any of the deeds or conveyances by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Land and Oil Company and San Luis Land and Improvement Company conveyed an undivided one-half of all of, or any part of that certain tract, piece or parcel of land consisting of 10,067.2 acres, described in the first paragraph of said Bill of Complaint, with the exception of the lots, pieces and parcels mentioned in said first paragraph as excepted from the 10,067.2 acre tract described therein.

V. This defendant further answering says: That it has no information or belief upon the subject sufficient to enable it to answer the allegations contained in the fourteenth paragraph of said Bill of Complaint, and on that ground this defendant denies each and every of the allegations in said fourteenth paragraph contained.

VI. This defendant further answering, denies that it had notice of any right, title or interest of the complainant of, in or to an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, or that it had such notice before it entered upon said tract of land, or paid any money or consideration for any right or interest therein or thereto.

VII. This defendant further answering, denies on information and belief that on or about the 20th day

of May, 1908, or at any other time the said Teresa Bell, Mercantile Trust Company of San Francisco and said San Francisco Savings Union combined and conspired together or made or entered into a secret combination or conspiracy to evade or defeat the said decree in said action No. 4424, or to deprive said complainant of its rights, title or interest in or to an undivided one-half of said tract of land, consisting of 10,067.2 acres, or any of its interest in or right to the proceeds or every or any part of the proceeds that might be obtained by or from the sale of said tract of 10,067.2 acres, or that they did in pursuance of any such combination or conspiracy or with wrongful or unlawful or fraudulent intent, object, purpose or design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of its right, title or interest in or to an undivided one-half of said tract of land, or of any proceeds that might be obtained from the sale thereof under said decree in said action No. 4424, have or cause said deed dated May 26th, 1908, to be made or executed or thereafter recorded as shown, averred and alleged in the eleventh paragraph of said Bill of Complaint, or that said deed of May 26th, 1908, was made, executed or delivered under or in pursuance or in execution of said alleged wrongful and unlawful combination and conspiracy.

VIII. This defendant further answering, alleges: That at the time of the filing of the Bill of Complaint herein and long prior thereto this defendant was, and it now is, the owner of a license to lay, build, operate and maintain a pipe lines for the conduct of petroleum, gas, water and other liquid substances over, through, under and across those certain portions of said 10,067.2 acre tract of land, described as follows, to-wit:

1st: Commencing at a point on the northerly line of what is known as the "Teresa Bell Estate," which point is on the south line of the northeast quarter of Section 26, Township 9 N., Range 33 W., S. B. B. & M., and thence in a westerly direction from the southeast corner of said northeast quarter of Section 26, 2548 feet; thence

in a southwesterly direction 16,594 feet, more or less, to a point on the westerly line of said Teresa Bell Estate; said point being distant 4575 feet north of the southwest corner of said Teresa Bell Estate, together with the right of ingress and egress over said lands for the purpose of repairing said line.

2nd: Ten feet on each side of the following described line, to-wit: Commencing at a point 150 feet south of $\frac{1}{4}$ sec. corner between Sections 25 and 26, T. 9 N., R. 33 W., S. B. M., and on line between Union Oil Company and Associated Oil Company property, running thence first south $12^{\circ} 12' W.$, 280 feet to station 6 plus 90; thence south $40^{\circ} 29' W.$, 1599 feet; thence third south $24^{\circ} 29' W.$ 1699 feet; thence south $36^{\circ} 09' W.$ 638 feet to station 46 plus 26; thence south $11^{\circ} 39' W.$ 1150 to station 57 plus 76; thence 255 feet to station 59 plus 31, which station is identical with L 66 plus 70 E. S. Ferguson survey; thence south $24^{\circ} 32' W.$ 530 feet to station 72 plus 00; thence south $29^{\circ} 20' West$ 10,250 feet to station 175 plus 00; thence south $33^{\circ} 52' W.$ 497 feet to station 179 plus 97, which point is on the line between Los Flores Ranch and Theresa Bell, and 4615 feet north of S. W. cor. of Theresa Bell Ranch.

Wherefore, this defendant begs to be hence dismissed with its reasonable costs and charges, in this behalf most wrongfully sustained.

(Seal) Associated Oil Company,
By G. Sheridan, Secretary.
Edmund Tauszky,

Attorney for Defendant Associated Oil Company.

United States of America, Northern District of California, City and County of San Francisco, ss.

On this 28th day of June, 1912, before me personally appeared G. Sheridan, who made solemn oath that she is an officer, to-wit, Secretary, of the Associated Oil Company, the defendant named in the foregoing answer; that she has read said answer and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information or belief, and as to those matters that she

believes it to be true.

G. Sheridan.

Subscribed and sworn to before me, this 28th day of June, 1912.

O. A. Eggers,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 29, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

The demurrer of the defendant Union Oil Company of California, to the bill of complaint of the above named complainant U. S. Oil and Land Company.

This defendant, Union Oil Company of California, a corporation, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer sheweth:

I. That the said complaint has not made, or stated, any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against this defendant.

II. That it appears from the complainant's bill of complaint that each and all of the grounds therein alleged, and upon which relief is sought are stale, and that the same should not be entertained by a court of equity at this time.

Wherefore, for this and divers other good causes of demurrer, the defendant prays judgment of the Court whether it shall be compelled to answer, and it prays to be hence dismissed with costs.

Lewis W. Andrews,
Thos. O. Toland,

Solicitors for Defendant Union Oil Company of California, a Corporation.

Southern Division of Southern District of California, County of Los Angeles, ss.

Giles Kellogg, the Secretary of Union Oil Company of California, a defendant, above named, makes solemn oath and says: That the foregoing demurrer is not interposed for delay, and that the same is true in point of law.

Giles Kellogg.

Subscribed and sworn to before me this 11th day of November, 1912.

Carrie M. Van Delinder,
Notary Public in and for Los Angeles County, California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Lewis W. Andrews,
Thos. O. Toland,

Solicitors for Defendant Union Oil Company of California, a Corporation.

(Endorsed.)

Filed Nov. 11, 1912. Wm. M. Van Dyke, Clerk. By Murray C. White, Deputy Clerk. Received copy of the within demurrer this 11th day of November, 1912, James L. Crittenden, Barclay Henley, Richards & Carrier, Attorney for Complainants. Lewis W. Andrews, Thos. O. Toland, Cedric E. Johnson 1100-5 Union Oil Bldg., Los Angeles, Attorneys for U. O. Co. of Cal.

(TITLE OF COURT AND CAUSE.)

Attorneys for Complainant: Richards & Carrier, James L. Crittenden and Barclay Henley.

Attorneys for Defendant: Edmund Tauszky, for Associated Oil Co.; Peter J. Crosby, for defendants Thos. F. Bell, Bessie M. Bell, W. E. Bell, Reginald Bell; John Lewellyn Auzeries and Peter J. Crosby; I. Z. Blakeman, for Teresa Bell, et al.; Chauncey S. Goodrich, for W. P. Hammon et al.; A. E. Bolton, for A. S. Holman; Charles W. Slack, for W. P. Hammon et al.; Lewis W. Andrews & Thos. O. Toland, for Union Oil Co.

A demurrer has been interposed to the bill of com-

plaint in this case on the following grounds:

1st. Because the complainant has a plain, speedy and adequate remedy at law.

2nd. Because the claim in suit is stale, and the complainant has been guilty of laches, and

3rd. Because the judgment upon which complainant bases its right to relief has been reversed by the Supreme Court of the State of California on appeal from an order refusing to grant a new trial and a judgment adverse to the complainant was rendered on the retrial, which has been affirmed by the Supreme Court of the State on appeal.

1. I am of opinion that the complainant has no adequate remedy at law in the Courts of the United States and this is the true test of equity jurisdiction in a Federal Court.

2. The suit was brought within the period limited by the statute of limitations of the State of California and there is nothing on the face of the bill to warrant the Court in curtailing the statutory period or in refusing to apply the analogy of the state statute.

3. If I felt at liberty to take judicial notice of the numerous orders and decisions that may have been entered in the Courts of California in the course of the protracted litigation referred to in the bill, I would perhaps feel constrained to hold that there is no equity in the bill and that the demurrer should be sustained. But I am satisfied I am not authorized to take judicial notice of judgments entered in the Courts of this State. Doubtless this Court will take judicial notice of the general rules of law declared by the Supreme Court of California in written opinions, but it will not take such notice of the judgment in any particular case unless properly pleaded and proved.

For the reasons thus briefly stated, I am of opinion that the grounds of the demurrer are either not well taken or are not apparent on the face of the bill and the demurrer is accordingly overruled.

Some of the defendants have answered as well as demurred and their answers will be permitted to stand.

The remaining defendants will be required to answer under the rules.

Let an order be entered accordingly.

Rudkin, Dist. Judge.

(Endorsed.) No. 140 Civil. United States District Court, Southern District of California, Southern Division. U. S. Oil and Land Company, a Corporation. Complainant, vs. Teresa Bell, et al., Defendants. Opinion on Demurrers. Filed November 19, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: The July Term, A. D. 1912, of the District Court of the United States, in and for the Southern District of California, Southern Division, held in the Court Room thereof, at Los Angeles, on Wednesday, the 27th day of November, in the year of our Lord, one thousand nine hundred and twelve.

Present:

The Honorable Frank H. Rudkin, District Judge.

No. 140 Civil, S. D.

United States Oil & Land Company, Complainant

vs.

Teresa Bell, as Administratrix, etc., et al., Defendants.

This cause having heretofore been submitted to the Court on defendants' demurrer to the bill of complaint, and the Court, Hon. Frank H. Rudkin, U. S. District Judge, having heretofore on Nov. 19th, 1912, filed an opinion, holding that said demurrer should be overruled; it is now by the Court ordered, that defendants' demurrer to the bill of complaint be, and the same hereby is overruled, with leave to the defendants to answer said bill of complaint under the rules of this Court.

(Endorsed.) No. 140 Civil. United States District Court, Southern District of California, Southern Division. United States Oil & Land Company vs. Teresa Bell, etc., et al. Copy order overruling demurrer. Filed July 23, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Plea in Abatement of Defendant Union Oil Company

of California, to the Bill of Complaint of United States Oil and Land Company, a Corporation.

To the Honorable Judge of the District Court of the United States, for the Southern District of California, in and for the Southern Division:

1. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's Bill of Complaint, mentioned and contained, to be true, in such sort, manner and form as the same are therein set forth and alleged, for plea to so much of said Bill of Complaint as is hereinafter stated, and for matter in abatement of this suit, alleges;—

2. That there was granted and conveyed to and vested in said Union Oil Company of California, by that certain deed dated and recorded, in the office of the County Recorder of Santa Barbara County in Book 118 of Deeds, at page 591, et seq., on the 15th day of June, 1908, and executed and delivered to this defendant by Teresa Bell, as the administratrix of the estate of Thomas Bell, deceased, with the will annexed, and by that certain deed dated April 27th, 1908, and recorded June 15th, 1908, in Book 118 of Deeds, at page 589, et seq., of said Santa Barbara County, California, records, and executed and delivered to this defendant by Teresa Bell, individually, and by each and all of the other heirs, devisees, legatees and persons entitled in any wise to succeed to or take the estate or any interest in the estate of said Thomas Bell, deceased, the title in fee simple absolute, together with all and singular the tenements, hereditaments and appurtenances to or of that certain tract, piece or parcel of land situate, lying and being in the County of Santa Barbara, State of California, and bounded and particularly described as follows, to-wit:—

Commencing at the southeast corner of the tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by deed of conveyance bearing date the 16th day of August, 1867, and running thence due east to the westerly line of the tract of land conveyed by said de la Guerra to said Thomas Bell (since deceased) June

26th, 1867; thence running northerly along said westerly line to its intersection with the northern boundary line of the Rancho de Los Alamos; thence running westerly and along said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada; and thence running southerly along the easterly boundary line of said Jose Antonio Estrada to the place of beginning, containing about four thousand (4,000) acres of land,

And that at the time of the commencement of this suit, and for and during more than five years prior thereto this defendant Union Oil Company of California, and its predecessors in interest therein, had been and were and ever since the commencement of this suit this defendant has been, and still is, the owner in the sole and exclusive possession and entitled to the possession of the above described tract and parcel of land;

That the above described tract and parcel of land is by metes and bounds and by monuments and courses more particularly described as follows, to-wit:

Beginning at an iron pipe set in the straight line drawn and lying between Station No. 3 of Survey No. 358 of said Santa Barbara County, distant north $6^{\circ} 54' 45''$ east from said Station No. 3 of said County Survey No. 358, and a point in the northern boundary line of said Rancho de Los Alamos (also called Rancho Alamos), which point in said northern line is distant 16.97 chains west from the post or stake marked L. A. 6, of the official survey of said Rancho de Los Alamos, and running thence from said point of beginning along and with said straight line north $6^{\circ} 54' 45''$ east 16,894.98 feet to pipe in mound of rocks at said point in the northern line of said Rancho Los Alamos, distant 16.97 chains west from said stake L. A. 6 of the official survey of said rancho; thence along and with said northern boundary line of said Rancho Los Alamos north $89^{\circ} 40' 51''$ west 1,523.68 feet to spike in live oak tree marked L. A. No. 7; thence north $0^{\circ} 15' 9''$ east 2,646.8 feet to an iron corner post; thence north $89^{\circ} 46' 34''$ west 5,274.82 feet

to old 4"x4" stake; thence north $0^{\circ} 17' 26''$ east 2,646.2 feet to 1" galvanized iron pipe; thence north $89^{\circ} 40' 44''$ west 2,599.01 feet to an iron pipe set at old 4"x4" redwood stake marked E. 6 R. 151 and F. F. F., and set in boundary line between Stations L. A. 10 and L. A. 11 of the official survey of said rancho and thence leaving said northern boundary of said rancho south $1^{\circ} 26' 43''$ west to said southeast corner of said tract of land, conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada, by said deed of conveyance bearing date the 16th day of August, 1867, and thence due east 7,895.4 feet to said iron pipe set at said point of commencement, containing 3,997.33 acres, according to survey and map thereof made in March, 1908, and filed in the office of said County Recorder of said Santa Barbara County, on March 25th, 1908, and pasted in Book 4, page 81 of Maps and Surveys, in said Recorder's office.

3. That said line extending from said iron pipe at said point of commencement in said particular description of said tract of 3,997.33 acres to said iron pipe in mound of rocks at said point in the northern boundary of said Rancho de Los Alamos distant 16.97 chains west from said stake L. A. 6, of the official survey of said Rancho de Los Alamos is identical and co-incidental with a portion of the west boundary of the tract of land containing 10,067.2 acres, referred to and described and alleged to be owned in fee simple by said complainant, in the subdivision 1st of said Bill of Complaint; that said tract of land containing 3997.33 acres lies west of and on its easterly side is bounded by said line 16,894.98 feet long, and that said tract of land alleged in said Bill of Complaint to contain 10,067.2 acres lies to the east of, and on its westerly side is bounded by said last named line, and that said tract of 3,997.33 acres is wholly exterior to and does not coincide to any extent whatever with said tract of land so alleged to contain 10,067.2 acres or any part thereof.

4. This defendant alleges that it does not own or claim any land easterly of said line last hereinabove described or any interest therein, except such rights of way

in public and private roads and other servitudes thereon as exist and have existed from time immemorial as appurtenant and belonging to said tract of 3,997.33 acres, and denies that said complainant owns or is in any manner interested in either the whole or any part of said tract of 3,997.33 acres of land bounded on the east by, and lying adjacent to and to the west of said last named line.

All of which matters and things this defendant avers to be true and pleads the said facts to the said complainant's bill and prays the judgment of this Honorable Court whether this defendant Union Oil Company of California ought to be required to make any other or further answer to the said bill.

Union Oil Company of California,
By Lewis W. Andrews and Thos. O. Toland,
Its Solicitors.

Southern Division of Southern District of California,
State of California, County of Los Angeles, ss.

Giles Kellogg, Secretary of Union Oil Company of California, a corporation defendant above named, makes solemn oath and says:

That he is such secretary; that the foregoing plea is not interposed for delay, and that the same is true in point of fact.

Giles Kellogg,
Secretary of said Corporation Defendant.

Subscribed in my presence and sworn to before me
this 11th day of November, 1912.

(Seal)

Carrie M. Van Delinder,
Notary Public in and for the County of Los Angeles,
State of California.

The undersigned solicitors for said defendant Union Oil Company of California do hereby certify that in their opinion the foregoing plea is well founded in point of law.

Thos. O. Toland
Lewis W. Andrews,
Solicitors for said Defendant Union Oil Company of
California.

(Endorsed.) Filed Dec. 2, 1912. Wm. M. Van Dyke, Clerk By Chas. N. Williams, Deputy Clerk. Received copy of the within plea this 11th day of November, 1912. James L. Crittenden, Barclay Henley, Richards & Carrier, Attorney for Complainant. Lewis W. Andrews, Thos. O. Toland, 1100-5 Union Oil Bldg., Los Angeles, Attorneys for Union Oil Co. of Cal.

(TITLE OF COURT AND CAUSE.)

**JOINT AND SEVERAL PLEA OF
W. P. HAMMON AND F. C. VAN DEINSE.**

The joint and several plea of the above named defendants, W. P. Hammon and F. C. van Deirse, to the bill of complaint of the above named complainant U. S. Oil & Land Company:

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of the said bill of complaint say:

I. That subsequent to the 6th day of March, 1901, and within the time and in the manner permitted and prescribed by the laws of the State of California, George Staacke, individually and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, defendants in the action mentioned and described in paragraph "7th" of the said bill of complaint, gave notice of their intention to move for a new trial of the said action; that thereafter on the 7th day of June, 1901, the said motion for a new trial was made by the said defendants in the said action, and thereupon and on the said day the Superior Court of the State of California, in and for the County of Santa Barbara, made and entered in the said action its order denying the said motion; that thereafter, on the 8th day of June, 1901, and synchronously with the service and filing of their notice of appeal from the decree in the said action, mentioned and described in paragraph "8th" of the said bill of complaint, and within the time and in the manner permitted and prescribed by

the laws of the State of California, the said George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, served and filed in the said action their notice of appeal to the Supreme Court of the State of California from the said order denying their said motion for a new trial, and thereafter prosecuted such appeal; that thereafter and prior to the 16th day of September, 1902, John S. Bell, the plaintiff in the said action and the respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss both the said appeals; that the said Supreme Court on the 16th day of September, 1902, after hearing of the said motions of the said plaintiff and respondent, made and entered its order and judgment dismissing the said appeal from the decree in the said action, on the sole ground that notice of such appeal had been prematurely given by the appellants, but denying the said motion to dismiss the said appeal from the said order denying the said motion for a new trial of the said action; that thereafter the said defendants continued to prosecute their said appeal from the said order denying the said motion for a new trial of the said action; that on the 30th day of November, 1903, after hearing of the said appeal, the said Supreme Court of the State of California made and entered its order and judgment reversing the said order denying the said motion for a new trial and remanding the said action to the said Superior Court of the State of California, in and for the County of Santa Barbara; that on the 28th day of December, 1903, the said Supreme Court amended its said judgment reversing the said order by its judgment and decree then made and entered, so that the said order and judgment, as so amended on the said 28th day of December, 1903, was and is in the words and figures as follows:

"IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA.

L. A. No. 1115 Bank.

John S. Bell, Resp. vs. George Staacke et al., App.
On appeal from the Superior Court in and for the

County of Santa Barbara.

And now at this day this cause being called and having been heretofore submitted and taken under advisement and all and singular the law and the premises being fully considered the opinion of the court herein is delivered by the court.

Whereupon, it was adjudged and decreed by the court on the 30th day of November, 1903, that the order of the Superior Court in and for the County of Santa Barbara in the above entitled cause denying the appellant's motion for a new trial is reversed and cause remanded subsequently on the 28th day of December, 1903, the judgment heretofore rendered herein in this court is hereby amended so as to read as follows:

The order denying the motion for a new trial is reversed except as to the issues covered by the twenty-third paragraph of the findings, to-wit: That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15 and paragraph 4 of the conclusions of law and except as to the issues covered by the additional findings and cause remanded for new trial of all other issues and appellant to recover costs of appeal."

That the said Supreme Court of the State of California, by its judgment as so amended, ordered a new trial, by the said Superior Court of the State of California, in and for the County of Santa Barbara, of all the issues made by the pleadings in the said action save those covered by the findings particularly excepted by the said decree of amendment of the said Supreme Court; that, under the laws of the State of California, the said judgment ordering as aforesaid a new trial of the said action forever vacated the said decree in the said action theretofore made by the said Superior Court of the State of California, in and for the County of Santa Barbara, mentioned and described in paragraph "7th" of the said bill of complaint.

II. That the new trial of the said action ordered

as aforesaid by the said Supreme Court of the State of California was had in the said Superior Court of the State of California, in and for the County of Santa Barbara, during the months of April and May, 1904; that at such new trial the plaintiff in the said action, the said John S. Bell, and his grantee James L. Crittenden, the alleged grantor of the complainant herein, U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial had been ordered as aforesaid by the said Supreme Court, were submitted by the respective parties to the said action, including the said plaintiff therein, John S. Bell, and by the said James L. Crittenden, to the said Superior Court for decision; that thereafter, on the 17th day of October, 1904, the said Superior Court made, and on the 26th day of October, 1904, filed, its decision in the said action, covering the said issues, which said decision was and is in the words and figures as follows:

"IN THE SUPERIOR COURT OF THE
COUNTY OF SANTA BARBARA,
STATE OF CALIFORNIA.

No. 2826.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

FINDINGS.

The trial of the issues, as to which a new trial was ordered by the Supreme Court, in the above-entitled action, came on regularly before the Court sitting without a jury. The plaintiff appeared by his attorneys Jas. L. Crittenden Esq. and Messrs. Richards & Carrier; T. Z. Blakeman Esq., with whom was also associated Messrs. Canfield & Starbuck, appeared for the defendant Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell deceased, and the defendant George Staacke appeared by his attorneys Messrs. Canfield & Starbuck. The cross-

complaint of the defendants was dismissed as to the defendant Louis Jones, and the trial of the action as between the plaintiff and the said defendant Jones was continued.

An order of Court was duly made and entered substituting Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, as defendant in the place and stead of Teresa Bell as special administratrix of the said estate of Thomas Bell deceased, the said Teresa Bell as said special administratrix having been heretofore by the order of the Court duly made and entered substituted as defendant in the place and stead of John W. C. Maxwell and George Staacke as executors of the last will of Thomas Bell deceased.

Evidence oral and documentary was introduced in behalf of the respective parties aforesaid and thereupon after argument by the attorneys aforesaid for the respective parties, the whole case upon the issues aforesaid was submitted to the Court for its decision.

And the Court having considered the case, and being fully advised in the premises makes its findings of fact and conclusions of law as follows:

THE COURT FINDS—

1. That on August 23d, 1887, plaintiff was the owner of the tract of land in said County of Santa Barbara bounded and described as follows, to wit:

Commencing at a post in a deep ravine on the Southern boundary line of the Rancho de Los Alamos, being Station No. Two of County Survey Number Three hundred and fifty-seven, May the thirty-first A. D. One thousand eight hundred and sixty-seven for James B. Shaw, from which Station Number One of the official survey on the southeast corner of said Rancho bears south Seventy-seven and one-fourth degrees east, Eighty-five chains and seventy-two links distant; thence running north Seventy-seven and one-fourth degrees west, along the southern boundary line of said rancho, One hundred and seventy-nine chains to a post on the south slope of a high mountain range being station Number Two of County Sur-

vey Number Three hundred and fifty-eight made for Thomas Bell; thence running north three and one-half degrees east, two hundred and twenty chains and eighty-four links to station Number Three of said County survey; thence running North five and three-fourths degrees east Three hundred and eighty-five chains and nine links to the northern boundary line of said Rancho at a point sixteen chains and ninety-seven links west of a post marked A No. 6; thence running east along the said northern boundary line of said Rancho sixteen chains and ninety-seven links to said post marked A No. 6 of the official survey of said Rancho; thence running south Forty chains along the line of said official survey; thence running east forty chains along the northern line of said official survey, thence running north Forty-nine and one-fourth degrees east and along the said northern line of said official survey one hundred and twenty-nine chains and six links to station Number Four of County survey Number Three hundred and fifty-seven; thence running south five and three quarter degrees west along the western line of said County survey number Three hundred and fifty-seven Three hundred and eighteen chains and twenty-eight links to station Number Three of said survey; thence running south three and one-half degrees west and along the line of said survey Two hundred and twenty chains and eighty-four links to the place of beginning; Containing Ten thousand and sixty-seven and two-tenths acres of land.

That on the 23d day of August, 1887, Thomas Bell was the owner of the tract of land in said County of Santa Barbara, being that portion of the Rancho de Los Alamos which is bounded and described as follows, to wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la

Guerra to Albert Packard on the 26th day of June, A. D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose Antonio de la Guerra to the said Jose Antonio Estrada; thence running southerly along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning; Containing about 4,000 acres of land.

That on said 23d day of August, the plaintiff and said Thomas Bell sold and conveyed to Dwight W. Grover said two tracts of land for the total sum and price of Three hundred and fifty thousand dollars, of which \$270,000 was the price of the tract of land hereinabove first described, and \$80,000 the price of the other tract; \$70,000 of the total price was paid in cash and the balance of \$280,000 was paid by four notes executed by said Grover in favor of said Thomas Bell for \$54,000 each, dated on said day, and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land first above described in favor of said Thomas Bell, and by four promissory notes executed by said Grover in favor of said Thomas Bell for \$16,000 each, dated on said day and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land second above described in favor of said Thomas Bell.

That on the 27th day of August, 1887, the plaintiff and said Thomas Bell executed and delivered to each other an agreement in writing in words and figures following, to wit:

"Agreement made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California,

"Whereas, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of Three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre, and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand dollars on that of Thomas Bell, were made to Thomas Bell.

"And Whereas, the said Thomas Bell has heretofore from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed having been made, examined and found correct, and it is settled that the said John S. Bell is now indebted to said Thomas Bell in the sum of Twenty-five thousand dollars five hundred and twenty-nine 5-100 dollars in United States gold coin which sum is to bear interest from this date at the rate of six per cent per annum.

"Now it is agreed between said parties that the said Thomas Bell shall hold said notes and said mortgage for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said

John S. Bell, with like interest from the date of making the same after which he shall, on demand, assign the same to said John S. Bell.

"This agreement shall bind and be for the benefits of the heirs, executors, administrator and assigns of both of said parties.

"Witness our hands the day and year first above written.

Thomas Bell.

John S. Bell."

That on or about the 25th day of August, 1887, the said Dwight W. Grover granted, bargained, sold and conveyed by deed to Samuel Rosener an undivided 3-5 of all the land and real property hereinbefore described.

2. That neither the said Grover nor the said Rosener made payment of the first of said four notes of \$54,000 each or of the first said four notes of \$16,000 each or of any part or portion thereof, nor did they, the said Grover and Rosener, or either of them, pay any part or portion of any of said notes given as aforesaid for the balance of the purchase price of the said two tracts of land.

That after the maturity of the first of the said notes and prior to the 7th day of March, 1889, it was agreed between the said Thomas Bell and the said Grover and Rosener that the said Grover and Rosener should convey to George Staacke, who was the confidential clerk and agent of the said Thomas Bell, the land hereinabove first described, except such portions thereof as the said Grover and Rosener had sold, and that said Grover and Rosener should assign and transfer unto said Thomas Bell all notes and mortgages held and taken by them for deferred payments of the purchase price of such portions of said tract of land hereinabove first described as they, the said Grover and Rosener, had sold, and that the said Thomas Bell, should in consideration thereof, release the said Grover and Rosener from the obligation of said four notes of \$54,000 each and of the

mortgage given as aforesaid to secure the payment thereof.

That on March 7th, 1889, in pursuance of the agreement last aforesaid, the said Grover and Rosener, with the knowledge and consent of the plaintiff John S. Bell, and for the purpose of obtaining a release from the obligation of said four notes of \$54,000 each and of the said mortgage to secure them, and for no other purpose whatever, executed a deed to said George Staacke of all the tract of land first hereinabove and in said mortgage described, excepting therefrom all the town lots sold and conveyed by deed by said John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos surveyed for J. B. Shaw and John S. Bell, September 15, 1876, W. W. Bagster, surveyor," also excepting therefrom the land conveyed or donated prior to June 7th, 1887, by John S. Bell for county roads, streets and railroads and cemetery plot adjoining said town of Los Alamos conveyed by said John S. Bell, also excepting therefrom certain described parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosener since August 23d, 1887.

That on the said 7th of March, 1889, and in pursuance of the agreement aforesaid between the said Grover and Rosener, and Thomas Bell, the said Grover and Rosener, with the knowledge and consent of the said John S. Bell, assigned and transferred to the said Thomas Bell all notes and mortgages taken and held by them as security for the deferred payments on portions of the said tract of land hereinabove first described which they, said Grover and Rosener, had sold since the 23d day of August, 1887.

That upon the delivery of the said deed of March 7th, 1889, by Grover and Rosener to said George Staacke, and in consideration thereof, the said Thomas Bell delivered to said Grover and Rosener the said four notes for \$54,000 each secured by the said

mortgage on the tract of land hereinabove first described, and released and satisfied said mortgage and dismissed the suit which he had begun for the foreclosure thereof.

That the said George Staacke paid nothing to said Grover and Rosener for said deed and conveyance to him, but was the nominee of the said Thomas Bell in regard thereto, and accepted said deed and conveyance solely as the nominee of said Thomas Bell and in trust to hold the land thereby conveyed first for the use and benefit of Thomas Bell, to wit: as security for the payment by the plaintiff John S. Bell to said Thomas Bell of the balance then due to said Thomas Bell upon all sums of money which had theretofore been advanced and loaned by the said Thomas Bell to the said John S. Bell and for all sums of money which the said Thomas Bell should thereafter loan or advance to the said John S. Bell, with interest thereon, and second for the use and benefit of the said John S. Bell, to wit: to convey to the said John S. Bell the said tract of land or all that remained thereof after the payment of all sums then due to said Thomas Bell by said John S. Bell, and all advances and loans thereafter made by said Thomas Bell to said John S. Bell.

That at the time of the said execution of the said conveyance by said Grover and Rosener to said Staacke, it was agreed by and between the plaintiff John S. Bell and the said Thomas Bell that said Staacke should hold the land hereinabove first described, with the exceptions therefrom hereinabove noted, as security for the payment by the plaintiff to said Thomas Bell of all sums of money which had theretofore been advanced by said Thomas Bell to the plaintiff, or which were then due and owing by said John S. Bell to said Thomas Bell, and for all sums of money which the said Thomas Bell should thereafter advance or loan to the said John S. Bell, with interest thereon; and that after the payment of all such sums with interest thereon by John S. Bell to the said Thomas Bell, the said Staacke should

convey the said land, hereinabove first described, or what remained thereof, to the said John S. Bell.

That after the date of the said agreement between John S. and Thomas Bell, dated August 27th, 1887, and until the date of his death, the said Thomas Bell continued from time to time at the request of John S. Bell to make advances and loans of money to him, the said John S. Bell, upon the security, first of the said four notes of \$54,000 each and the mortgage made to secure the same, and after the surrender thereof and the conveyance of the said tract of land hereinabove first described by Grover and Rosener to George Staacke upon the security of the said tract of land; and the said John S. Bell accepted and received all the said advances and loans of money by the said Thomas Bell to him with the knowledge at the time the said loans and advances were made, that Thomas Bell made the said loans and advances upon the security aforesaid.

That by judgment heretofore, to wit: on the 9th day of July, 1901, made and entered in this action upon the cross-complaint of the defendant the said administratrix of the estate of Thomas Bell deceased, it was determined that there was at the date of the death of Thomas Bell, to-wit: on October 16th, 1892, a balance due from said John S. Bell, the plaintiff herein, to the said Thomas Bell in the sum of Fifty-two thousand one hundred and twenty and 15-100 (\$52,120.15) dollars for the said loans and advances made by the said Thomas Bell to the said John S. Bell, including the said balance of 25,529.05 mentioned in the said agreement of August 27th, 1887 (with interest on said balance and on said other loans and advances according to the said agreement of August 27th, 1887. And the said defendant, the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, recovered in this action of the plaintiff John S. Bell, on the 9th of July, 1901, judgment against the said John S. Bell for the said balance of \$52,120.15, and for interest thereon at the

rate of seven per cent per annum from the 16th day of October, 1892.

That the said Grover and Rosener upon the execution of said deed of March 7th, 1889, by them to said George Staacke, delivered possession to said George Staacke of all the tract of land hereinabove first described, except the portions thereof mentioned in said deed as reserved and excepted, but the possession of said Staacke was at all times thereafter and until the death of Thomas Bell, subject to the control of said Thomas Bell, and said Thomas Bell at all times after the execution of said deed by Grover and Rosener to Staacke, with the knowledge and consent of John S. Bell, exercised control and management over said tract of land and caused the rents and products thereof to be delivered to him at San Francisco. That the said rents and the proceeds of said products were by Thomas Bell placed to the credit of John S. Bell in his account which embraced the said loans and advances, and the said control and management of Thomas Bell was only because of and in aid of the lien upon said land existing in his favor for the balance due him upon said loans and advances made and to be made to said John S. Bell.

That no part of the said sum of \$52,120.15, or of the interest thereon, has been paid. That the whole of the said principal sum of \$52,120.15, and interest thereon from the 16th day of October, 1892, amounting to the sum of \$43,780.92 at the date hereof, is due and payable to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, upon the cross-complaint herein, and a lien exists in favor of the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, upon the said tract of land hereinabove first described, and conveyed to George Staacke by said deed of March 7th, 1889, for the payment of the said principal sum and interest, amounting to the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95, 901.07) dol-

lars, and for the accruing interest on the said sum of \$52,120.15.

3. That the said deed of March 7th, 1889, from Grover and Rosener to George Staacke was not executed and delivered by Grover and Rosener with the intent and for the purpose of conveying back and in trust to convey back to the plaintiff the tract of land hereinabove first and in said deed described, and said deed was not accepted and received by said Geo. Staacke in trust for said purpose, except that said George Staacke did accept and receive the said deed in trust to convey to the plaintiff the said tract of land after payment had been made by the plaintiff to Thomas Bell of all sums due by him to Thomas Bell for moneys loaned and advanced, and to be loaned and advanced, to him by said Thomas Bell. That said George Staacke does not hold the naked legal title to said tract of land in trust for the purpose of conveying and to convey and deed the same to the plaintiff and for no other purpose.

That the plaintiff did not on or about the 7th day of March, 1889, enter into or take actual possession of all or any portion of the land mentioned and described in the plaintiff's amended and supplemental complaint, and the plaintiff has not, ever since the 7th day of March, 1889, and down to the appointment of a receiver in this action, or during any part of said time, remained or been in the actual possession, adverse or otherwise, as owner in fee simple or otherwise of said land or any portion thereof.

That the defendant George Staacke did not, in violation of any trust, or without the knowledge or consent of plaintiff, borrow of the San Francisco Savings Union \$60,000, and did not in violation of any trust or trust deed convey said land in trust to secure the payment of said \$60,000.

That George Staacke and Thomas Bell did not appropriate to their own use said \$60,000, but the whole of said sum, less the cost of Abstract and execution and recording of papers, was by Thomas Bell placed to the credit of plaintiff in his said account,

and the plaintiff on February 12th, 1892, with full knowledge of the borrowing of said sum of \$60,000, ratified and approved the same and accepted and approved the crediting of the proceeds thereof to him in his account with said Thomas Bell.

That said John S. Bell was not the owner of the four notes of \$54,000 each executed by said Grover to Thomas Bell, and the mortgage given to secure them, except as the same were subject to the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinbefore set out. That said four notes and mortgage to secure them were not made and executed to Thomas Bell for the purpose of rendering the execution of releases and partial releases more convenient or easy.

It is not true that on or about the 6th of March, 1889, an oral agreement was made and entered into by and between said Grover, Rosener, John S. Bell and Thomas Bell, that said Grover and Rosener should deed and convey back to John S. Bell all or any of the land mentioned in the Amended and Supplemental Complaint, nor is it true that, hereafter and on or about the 6th day of March, 1889, John S. Bell and Thomas Bell made and entered into an oral agreement that any of said land should be conveyed back to John S. Bell by being first deeded and conveyed by said Grover and Rosener to George Staacke and then by said Staacke to John S. Bell.

That the deed of March 7th, 1889, was not made, executed and delivered to George Staacke, nor transfer of the 10,000 acre tract described therein made to said Staacke, with the intent and for the sole purpose of conveying and in trust to convey back to the plaintiff the said 10,000 acre tract or any part thereof, nor did said Staacke accept such conveyance for such sole purpose.

That the agreement of August 27th, 1887, between John S. Bell and Thomas Bell and hereinabove set out, was never rescinded by either, or by consent of both.

4. That the defendant George Staacke did not

pay or give any consideration for the deed of conveyance of the tract of land, hereinabove secondly described, by the said Grover and Rosener to him, of date March 7th, 1889, but the said deed of said tract was made by the said Grover and Rosener to the said Staacke at the request of Thomas Bell, and in consideration of the surrender by Thomas Bell to the said Grover and Rosener of the said four notes of \$16,000 each, and of the release of the mortgage given by the said Grover to secure the said notes and the dismissal of the suit brought by Thomas Bell for the foreclosure of the said mortgage. That the possession of the said tract of land last hereinabove referred to was delivered by the said Grover and Rosener to the said George Staacke who was at the time the confidential clerk and agent of said Thomas Bell, and the said Thomas Bell thereafter continuously controlled and managed the said tract of land received all the rents and profits thereof.

5. That on the 8th day of March, 1893, the plaintiff herein caused to be filed and recorded in the office of the County Recorder of the said County of Santa Barbara a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the land and premises affected thereby.

CONCLUSIONS OF LAW.

The Court concludes that a lien exists upon the tract of land in the findings hereinabove first described, and conveyed by the the deed of Grover and Rosener of March 7th, 1889, to George Staacke, in favor of the defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell deceased for the payment to her of the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars and accruing interest on \$52,120.15 thereof; And that the said administratrix defendant is entitled to a judgment of the Court in this action foreclosing the said lien and directing the sale to be made of the said tract of land, and out of the proceeds of such sale that there be paid first, the

costs and expenses of such sale; second, the costs of suit and an appeal taxed in favor of the said defendant the administratrix and defendant George Staacke, and then the amount of the said lien, to wit: the said sum of \$95,901.07 and accruing interest. And the balance of the proceeds of the sale, if any, to be paid to the plaintiff or his attorneys; And directing a judgment for deficiency if the sale of the said land does not realize sufficient to pay said costs and expenses of sale and amount due the said defendant the administratrix, to be entered against the plaintiff John S. Bell.

The said defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell deceased, is further entitled to a decree directing the defendant George Staacke to convey by proper and sufficient deed of conveyance to her as such administratrix the tract of land in the findings hereinabove secondly described.

Let judgment be entered accordingly.

Dated this the 17th day of October, 1904.

J. W. Taggart,

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That on the said 17th day of October, 1904, the said Superior Court made, and on the said 26th day of October, 1904, filed, and on the 28th day of October, 1904, entered, its judgment and decree, and order of sale, in the said action, in accordance with its said decision, which said judgment and decree, and order of sale, was and is in the words and figures as follows:

"IN THE SUPERIOR COURT OF THE
COUNTY OF SANTA BARBARA,
STATE OF CALIFORNIA.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as the administratrix with the Will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

No. 2826.

DECREE AND ORDER OF SALE.

The Court having made and filed herein its Find-

ings of fact and conclusions of law, it is now by the court Ordered, Adjudged and Decreed that there is now due and owing from the plaintiff John S. Bell to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars, and that the said plaintiff John S. Bell is personally liable for the whole amount thereof. That the said sum of \$95,901.07, and the costs of the said defendants to be taxed herein and their costs on appeal taxed at sum of \$608.50, is a valid lien upon the land and premises hereinafter set forth and described. That the defendant George Staacke holds the legal title of the said land and premises in trust, first, as security for the payment of the sum aforesaid and the costs of the said defendants to be taxed herein, and second, in trust for the use and benefit of the plaintiff John S. Bell.

It is further ordered, adjudged and decreed that all and singular the land and premises first mentioned in the Complaint and in the findings herein, and hereafter described, or so much thereof as may be sufficient to raise the amount due to the said defendant as aforesaid, and interest and costs of suit and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public action by the Commissioner herein appointed to make such sale, in the manner prescribed by law and according to the course and practice of this Court, and that the said Commissioner after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the said land and premises.

It is further ordered, adjudged and decreed that Jesse L. Hurlbut, of the City of Santa Barbara, be and he is hereby appointed a Commissioner of this Court to sell the said land and premises hereinafter described, and it is further ordered that before entering upon his duties as such Commissioner he shall take the oath and give an undertaking in the sum of

One Thousand Dollars, all as required by law, That the said Commissioner, out of the proceeds of the said sale, retain his fees and disbursements and pay to the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, or to their respective attorneys, out of the proceeds of the said sale the sum of of \$1085.15, costs of the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, in this suit and on appeal and accrued interest, and also pay to the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, or to her attorney, from the proceeds of the said sale the further sum of \$95,901.07, the amount so found to be due as aforesaid, together with interest on \$52,120.15 of said last sum at the rate of 7 per cent per annum from the date of this decree or so much thereof as the said proceeds of the sale will pay. That the plaintiff and all persons claiming or to claim from or under him, and all persons having liens subsequent to said conveyance of March 7th, 1889, by Grover and Rosener to George Staacke, by judgment or decree upon the land hereinafter described, and their personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree and their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of the notice of the pendency of this action with the Recorder of the County of Santa Barbara, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said land and premises and every part and parcel thereof from and after the delivery of said Commissioner's deed.

And it is further ordered, adjudged and decreed that the purchaser or purchasers of the said land and premises at such sale be let into possession thereof and that any of the parties to this action who may be in possession of said premises or any part thereof, and any person who since the commencement of this

action, has come into possession under them, or either of them, deliver possession thereof to said purchaser or purchasers, on production of the Commissioner's deed for such land and premises, or any part thereof.

And it is further ordered, adjudged and decreed that if the moneys arising from the said sale shall be insufficient to pay the amount so found due the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, as above stated with interest and costs as herein provided, and expenses of sale as aforesaid, said Commissioner specify the amount of such deficiency and balance due the said defendant in his return of said sale, and that on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against the plaintiff John S. Bell, and that the said plaintiff pay to the said defendant the amount of such deficiency and judgment with interest thereon at the rate of 7 per cent per annum from the date of said last mentioned return and judgment, and that the said defendant the administratrix have execution therefore.

The lands and premises directed to be sold by this decree are situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows:

Commencing at a post in a deep ravine on the southern boundary line of the Rancho de Los Alamos, being station No. Two of County Survey Number Three hundred and fifty-seven, May the thirty-first A. D. One thousand eight hundred and sixty-seven for James B. Shaw, from which station Number One of the official survey on the southeast corner of said Rancho bears south Seventy-seven and one-fourth degrees east, Eighty-five chains and seventy-two links distant; thence running north Seventy-seven and one-fourth degrees west, along the southern boundary line of said rancho One hundred and seventy-nine chains to a post on the south slope of a high mountain range being station Number Two of County Survey Number Three hundred and fifty-eight made for Thomas

Bell; thence running north three and one-half degrees east, two hundred and twenty chains and eighty-four links to station Number Three of said county survey; thence running north Five and three-fourths degrees east Three hundred and eighty-five chains and nine links to the northern boundary line of said Rancho at a point sixteen chains and ninety-seven links west of a post marked A. No. 6; thence running east along the said northern boundary line of said rancho sixteen chains and ninety-seven links to said post marked A. No. 6 of the official survey of said rancho; thence running south Forty chains along the line of said official survey; thence running east Forty chains along the northern line of said official survey; thence running north Forty-nine and one-fourth degrees east and along the said northern line of said official survey One hundred and twenty-nine chains and six links to station Number Four of County survey Number Three hundred and fifty-seven; thence running South five and three-quarter degrees west along the western line of said County survey number Three hundred and fifty-seven, Three hundred and eighteen chains and twenty-eight links to station number Three of said survey; thence running South three and one-half degrees west and along the line of said survey Two hundred and twenty chains and eighty-four links to the place of beginning; Containing Ten thousand and sixty-seven and two-tenths acres of land. Excepting and Reserving from the lands above described the following named town lots, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos," situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell, September 15th, 1876, W. W. Bagster, Surveyor, and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1879, in Book B of Miscellaneous Records, page 406, to wit:

Lots 3, 4, 5, 6, 7, 8, 9, 11 and 13 to 26 inclusive, in Block Four. Lots 3, 4, 6, 8, 9, and 14 to 22 inclusive, in Block Five. Lots 5 and 6 in Block Six. Lots 1 to

13 inclusive, 16, and 18 to 26 inclusive, in Block Eight. All of Block Nine except Lot 22. All of Block Sixteen except Lots 12, 13, 23, 24, 25 and 26. All of Block Seventeen except Lots 1, 2, 3, 4, 5, and 6. Lots 21 and 22 in Block Eighteen. Lots 1 to 9, inclusive in Block Twenty. Lots 1, 2, 3, 4, 6, 7, 8 and 9 in Block Twenty-one. Also excepting all the land conveyed or donated prior to June 7th, A. D. 1887 by John S. Bell for County Roads, Streets and Railroads; and the rights of the purchasers of Lots in said town of Los Alamos to the use of the streets and highways therein; also the Cemetery Plot adjoining said town, conveyed by said John S. Bell by deed of June 17, 1885. Also excepting the following tracts of the Grover, Rosener and Irwin subdivisions of a part of the Rancho de Los Alamos as the same is laid out on the map of the subdivisions of a part of said Rancho, surveyed by R. R. Harris in October and November, 1887, which map was filed in the County Recorder's Office of Santa Barbara County, February 11th, 1888, to wit: Tract Number Twenty-eight, containing four and twenty-five one-hundredths acres of land; Tracts numbers 51, 52 and 53, containing fifteen acres of land; Tract No. 23, containing four and thirty-one one-hundredths acres of land.

It is further ordered, adjudged and decreed that the defendant George Staacke, upon tender to him, execute and deliver to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, a deed of conveyance of the tract of land in the findings herein secondly described, to wit: All that tract of land situate in the County of Santa Barbara, State of California, bounded and described as follows, to wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la Guerra to Albert Packard on the 26th day of June, A.

D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the Northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose Antonio de la Guerra to the said Jose Antonio Estrada; thence running southerly along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning containing about Four Thousand acres of land.

Further ordered and adjudged that the defendants have and recover of the plaintiff their costs in the sum of \$476.65.

Dated this 17th day of October, 1904.

J. W. Taggart,

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That the said judgment and decree, and order of sale, has never been amended, modified, vacated or set aside or in any way altered, impaired or affected, and the same became and is final and conclusive upon the parties to the said action and their assigns.

That the plaintiff in the said action, the said John S. Bell, gave notice of his intention to move for a new trial of the said action, and thereafter in pursuance of such notice made his motion for such new trial; that thereafter and after hearing of the said motion, and on or about the 24th day of June, 1905, the said Superior Court of the State of California, in and for the County of Santa Barbara, made, filed and entered its order in the said action denying the said motion for a new trial thereof; that the plaintiff in the said action, the said John S. Bell, and his said grantee James L. Crittenden, the alleged grantor of the complainant herein, thereupon made and prosecuted two several appeals to the said Supreme Court of the State of California, one thereof from the said judgment and decree, and order of sale, made as aforesaid on the 17th day of October, 1904, the other thereof from the said order denying the motion of the

said plaintiff for a new trial of the said action, made as aforesaid on or about the 24th day of June, 1905.

III. That thereafter and prior to the 2nd day of January, 1906, the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, defendant in the said action and respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss the said appeal of the said John S. Bell from the said judgment and decree, and order of sale, made filed and entered as aforesaid in the said action; that the said Supreme Court on the 2nd day of January, 1906, after hearing of the said motion of the said defendant and respondent, made and entered its order and judgment dismissing the said appeal of the said plaintiff and appellant, John S. Bell, from the said judgment and decree, and order of sale; that on the 22nd day of July, 1907, after hearing of the said appeal of the said John S. Bell from the said order denying his said motion for a new trial of the said action, the said Supreme Court made and entered its order and judgment affirming the said order denying the said motion.

IV. That none of the said four several judgments, orders and decrees of the Supreme Court of the State of California, made as aforesaid on the 16th day of September, 1902, the 28th day of December, 1903, the 2nd day of January, 1906, and the 22nd day of July, 1907, respectively, has ever been reversed, amended, modified or in any way altered, or its effect controlled or otherwise at all affected; that the same, since the respective dates thereof, have all been and now are final; that the effect thereof was and is to reverse, vacate and render void and of no effect that certain judgment and decree of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action, pleaded and set out in the said paragraph "7th" of the bill of complaint herein, and to give full force, effect and finality to that certain judgment and decree, and order of sale, of the said Superior Court, made as aforesaid in

the said action on the 17th day of October, 1904, and hereinbefore pleaded and set forth, and validity to all acts done under and in pursuance of such judgment and decree and order of sale; that in and by its said four several judgments, orders and decrees the said Supreme Court of the State of California claimed, assumed and exercised, and it had, jurisdiction of and over each and all the appeals, questions and matters therein severally presented, decided, adjudged, ordered and decreed, and particularly jurisdiction to entertain, hear, pass upon, review, and grant the said appeal taken by the said George Staacke, individually, and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, from the said order made as aforesaid on the 7th day of June, 1901, denying their said motion for a new trial of the said action, and to remand the said cause to the said Superior Court of the State of California, in and for the County of Santa Barbara, for a new trial of all issues made therein save those expressly excepted as aforesaid, and asserted and upheld the jurisdiction of the said Superior Court to entertain, hear and pass upon the said motion of the said two defendants for a new trial of the said action and thereafter, upon the said remand of the said cause, to re-try all the issues made in the said action save those expressly excepted as aforesaid by the said Supreme Court, and to make file and enter in the said action the decision and the judgment both dated the 17th day of October, 1904, hereinbefore pleaded and set forth; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to re-try the said issues and to make the decision and judgment last hereinabove mentioned; that in passing upon and determining the said several four appeals, the said Supreme Court expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the said Superior Court of the State of California in and for the County of Santa Barbara, in the several four opinions and decisions of the said Supreme Court, supporting, announcing and directing its said four several judg-

ments, orders and decrees upon such appeals, respectively, appearing respectively, under the caption "Bell v. Staacke", in Volume 137 of the official reports of the said Supreme Court, at pages 307 to 314, both inclusive, in Volume 141 of such reports, at pages 186 to 204, both inclusive, in Volume 148 of such reports, at pages 404 to 407, both inclusive, and in Volume 151 of such reports, at pages 544 to 548, both inclusive, reference to which said opinions, decisions and reports are hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this plea; that the plaintiff in the said action, John S. Bell, and the said claimants under him, submitted to the jurisdiction of the said Supreme Court and the said Superior Court, respectively, upon said several appeals and said re-trial.

V. That on the day of February, 1906, an order of sale was issued out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon the said judgment and decree, bearing date the 17th day of October, 1904, hereinbefore pleaded and set forth, to Jesse L. Hurlburt, of the City of Santa Barbara, the Commissioner named and appointed therein to sell the land and premises in the said judgment and decree, and also in the bill of complaint herein, particularly described; that the said Jesse L. Hurlburt qualified as such Commissioner as required by the said judgment and decree and order of sale; that thereafter, on the 5th day of March, 1906, the said Commissioner made and, in pursuance of and in accordance with the said judgment and decree and the said order of sale, after due and legal notice of sale given according to law, sold at public auction, at the place and hour required by law, all the said land and premises to the highest bidder at such sale, to-wit, to the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, for the aggregate of the sum and amount due and decreed to such administratrix by and under the terms of the

said judgment and decree, together with the costs therein awarded to the defendants in the said action, the fees of the said Commissioner, and all the costs and expenses of the said sale, and thereafter on the said day made, executed and delivered to the said administratrix his certificate of the said sale and filed for record a duplicate of such certificate in the office of the County Recorder of the said County of Santa Barbara; that after the lapse of one year and on the 8th day of April, 1907, no redemption having theretofore been made of such land or premises, or any part or portion thereof, the said Commissioner, under and in accordance with law, made executed and delivered to the said administratrix a deed of conveyance of all the said land and premises, and the said administratrix thereupon forthwith filed the same for record in the office of the County Recorder of the said County of Santa Barbara, in Book 117 of Deeds, at page 332, of the records of said county, and immediately entered into possession of all the said land and premises, except the ranch residence, one corral and the garden, and about thirty-five (35) acres of land surrounding the said residence, and ever since has continued in complete, open and peaceable possession of all the said land and premises, save such exceptions; that at the date of such entry by the said administratrix the said ranch residence, corral, garden and surrounding thirty-five (35) acres were in the possession of the said plaintiff in the said action, John S. Bell, and his wife, Kate M. Bell, and they so continued in such possession until the 14th day of January, 1911, at which last named date the said administratrix recovered possession of all the same by means of a writ of assistance issued in her favor out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon an order of the said Superior Court therefor, made and entered in the said action on the 22nd day of March, 1909; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to make the said order; that ever since the said 14th day of January, 1911,

the said administratrix has continued in complete, open and peaceable possession of all the said ranch residence, corral, garden and surrounding thirty-five (35) acres; that the effect of the said sale, and of the execution, delivery and recordation as aforesaid of the said duplicate certificate of sale and the said deed, was to establish and vest and they did forthwith establish and vest the title of all the said land and premises in the said estate of Thomas Bell, deceased, free and clear of any claim, lien, right, title, interest or estate whatsoever, of the said plaintiff in the said action, John S. Bell, or of any grantee or successor in interest of the said plaintiff; that the said John S. Bell and Kate M. Bell, his wife, appealed to the said Supreme Court of the State of California from the order of the said Superior Court granting the aforesaid writ of assistance; that on the 9th day of January, 1911, after hearing of the said last mentioned appeal, the said Supreme Court made and entered its order and judgment affirming the said order granting the said writ; that the said order and judgment of affirmance of the Supreme Court has never been vacated, amended, modified or qualified, and the same has become and is final; that the said Supreme Court had jurisdiction to make the said judgment; that in passing upon and determining the said last mentioned appeal the said Supreme Court again expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the Superior Court of the State of California, in and for the County of Santa Barbara, as aforesaid, in its opinion and decision supporting, announcing and directing its said judgment affirming the said order granting the said writ of assistance, appearing in Volume 159 of the official reports of the said Supreme Court, at pages 193 to 197, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this plea.

VI. That the deed mentioned in paragraph "9th"

of the bill of complaint herein, executed by George Staacke to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the County of Santa Barbara, State of California, was so executed and delivered for the sole purpose of obtaining a stay of execution of the said judgment and decree mentioned and set out in paragraph "7th" of the bill of complaint herein, pending the said respective appeals of the said defendants to the Supreme Court of the State of California, from the said judgment and decree and from the said order denying a motion for a new trial of the action wherein the same had been rendered, and for no other purpose, under and in accordance with law, and particularly in compliance with the terms and provisions of Section 944 of the Code of Civil Procedure of the State of California, reading as follows:

"If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court."

That on the 28th day of December, 1903, upon the granting as aforesaid by the said Supreme Court of a new trial of the said action, and the consequent vacation as aforesaid of the said judgment and decrees, the said deed became and ever since has been void and ineffective for any purpose whatsoever.

VII. That the payment of \$179,411.40, made on or about the 16th day of June, 1908, by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to the defendants herein, Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the bill of complaint herein, was made under and in accordance with the terms of a certain order duly made, filed and entered on the 12th day of June, 1908, by the Superior Court of the State of California, in and for the City

and County of San Francisco, in the matter of the estate of the said Thomas Bell, deceased, then pending before the said Superior Court, which said order expressly authorized and directed such payment and was made upon the petition therefor of the said administratrix, filed in the said matter and Court on the 4th day of June, 1908, and upon a hearing thereof, and after notice of such hearing given in accordance with law; that such order has never been appealed from, or vacated or modified, and the same is final; that such payment was made for the sole purpose and with the sole intent of discharging the said property and premises from the lien and burden of that certain judgment and decree, in favor of the said Mercantile Trust Company of San Francisco and San Francisco Savings Union, pleaded and set forth in paragraph "10th" of the said bill of complaint, and for no other purpose and with no other intent; that such payment did discharge the said property and premises from such lien and burden and satisfied the said judgment, and was made under and in accordance with such judgment.

VIII. That the complainant herein, U. S. Oil & Land Company, at all times well knew each and all of the events, occurrences, facts and matters hereinbefore recited, and the effect in law thereof, as and when the same respectively took place, and well knew, before it first acquired or assumed to acquire its alleged interest in the said land and premises, of the said then pending action and of the right, title, interest and estate of the said administratrix, and the said estate of Thomas Bell, deceased, therein and to and in the said land and premises; that these defendants claim and have and own an interest in the said land and premises and in certain portions thereof, as successors in interest by purchase for valuable consideration, of the said estate and of the heirs and devisees of the said Thomas Bell, deceased; that these defendants knew of the matters hereinbefore pleaded at the time they acquired their said interest and relied upon them to assure and secure the title of these defendants to

such interest upon such purchase.

IX. That on the 9th day of March, 1910, the complainant, U. S. Oil & Land Company, commenced an action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 9th day of April, 1910, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 6th day of July, 1910; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7480 of civil actions in said Superior Court.

X. That on the 4th day of March, 1911, the complainant, U. S. Oil & Land Company, commenced another action in the said Superior Court of the State

of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit; the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 29th day of July, 1911, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit: on the 17th day of October, 1911; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7787 of civil actions in said Superior Court.

XI. That the complainant is concluded and prevented, by the matters aforesaid, and particularly by the several decisions, judgments, orders and decrees of Court hereinabove mentioned and referred to, from raising all or any of the matters set forth in its said bill of complaint.

All of which matters and things these defendants do aver to be true, and they plead the said respective decisions, judgments, orders, decrees and writs of the said Supreme Court of the State of California, the said Superior Court of the State of California, in and for the County of Santa Barbara, and the said Superior Court of the State of California, in and for the City and County of San Francisco, and the said records, hereinabove particularly mentioned and described, and the acts done in pursuance thereof, as hereinabove set forth, to the bill of complaint herein, and pray the judgment of this Honorable Court whether they ought to be required to make any other or further answer to the said bill of complaint, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

Chauncey S. Goodrich,

Solicitor for said defendants.

Northern District of California, City and County of San Francisco.—ss.

A. E. Boynton makes solemn oath and says: That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W. P. Hammon and F. C. Van Deirse, another of the defendants above named, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit on behalf of the said W. P. Hammon; and affiant further says that the foregoing plea is not interposed for delay and that the same is true in point of fact.

A. E. Boynton,

Subscribed and sworn to before me this 29th day of November, A. D. 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

Chauncey S. Goodrich.

(TITLE OF COURT AND CAUSE.)

ANSWER FORTIFYING PLEA.

The joint and several answers of the above named defendants, W. P. Hammon and F. C. Van Deinse, fortifying their joint and several pleas, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants respectively, now and at all times hereinafter saving and reserving unto themselves all and all manner of benefit and advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, not waiving their joint and several pleas filed herewith to the said bill of complaint but wholly relying thereon, fortifying the said pleas for answer to the said bill of complaint, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them at this time to make answer unto, answering, say:

I. These defendants deny that the said complainant is the owner in fee simple absolute of, or has any right, title, interest or estate in law or in equity in, an undivided one-half, or any portion, of all or any that certain tract, piece or parcel of land situate, lying and being in the County of Santa Barbara, State of California, mentioned and described in paragraph "1st" of the said bill of complaint; deny that the claims, or any of the claims, of these defendants, or of any of the defendants, to an estate or interest in said tract, adverse to the complainant, are or is wrongful or unlawful or without any right whatever, or that said defendants have not, or that each of them has not, any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece or parcel of land of which the said plaintiff claims to be the owner or in or to any part or portion thereof; deny that the judgment and decree set forth in paragraph "7th", and mentioned in paragraph "8th", of the said bill of complaint, ever became or was affirmed; deny that the said judgment and decree, ever or at all since

the dismissal by the Supreme Court of the State of California of that certain appeal therefrom mentioned in said paragraph "8th" of the said bill of complaint, has been or remained or still is in full force or in any force at all; deny that said judgment and decree was or is a final or any adjudication of all or any of the rights or interests of the parties, or any of them, to said action in which the same was rendered and entered, or otherwise, or at all; deny that all or any of the findings of fact or conclusions of law or the decision of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action of John S. Bell v. George Staacke, et al., save the 'twenty-third' paragraph of the said findings, and the portion of the 'twenty-second' paragraph thereof expressly excepted by the Supreme Court of the State of California on the 28th day of June, 1903, in its judgment directing a new trial of the said action, as set forth in paragraph I of the said plea of these defendants, and paragraph "4" of the conclusions of law, and the 'additional findings', on the 9th day of July, 1901, or ever or at all, became or ever since or ever or at all have or has been final or conclusive or binding or of any effect at all upon all or any of the parties to said action, or their successors in interest, or the successors or successor in interest of any of them, or upon each or all or any of the heirs of said Thomas Bell, deceased, or upon any persons or person; deny that the jurisdiction or power of said Superior Court to hear or grant any motion for a new trial in said action was then, or at any time prior to the 22nd day of July, 1907, terminated forever or for any time or at all or ceased to exist or was at all impaired or affected; deny that then or at any time the said Superior Court, or any or all appellate courts of the State of California, or the Supreme Court of the State of California, lost or ceased to have any or full jurisdiction whatsoever or at all to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made in any such notice or

motion, or to modify, alter or change, or to modify, alter and change, in any way or manner or respect said judgment of said Superior Court; deny that all or any of the findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid or otherwise on the 6th day of March, 1901, and on the 7th day of June, 1901, or any of the said findings or conclusions, were or was or constituted the decision or the only decision, or any decision, or, save as expressly excepted by the Supreme Court of the State of California as aforesaid, were or was any portion of the decision in said action; deny that the transfer, grant and conveyance, or any of them, by George Staacke, made by and contained in the deed of conveyance described in paragraph "9th" of the said bill of complaint as delivered to C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk or otherwise or at all for or for the benefit of James L. Crittenden and Catherine M. Bell or either of them; deny that the same ever became or was an absolute, or any, grant or other deed, transfer or conveyance of all or any of the title or fee of, in or to, or of any interest in or to, said tract, piece or parcel of land of 10,067.2 acres, or any thereof, to said James L. Crittenden and Catherine M. Bell, or either of them, or vested in each or either of them an undivided one-half or the whole or any fraction of said lands or of each or every or any part or portion thereof; deny that the said grant, transfer or conveyance, or any part or portion thereof, became final, or at all effective for any purpose whatsoever save for the purpose of staying execution upon the said judgment and decree, on or about the 29th day of December, 1901, or at any time, or at all.

II. Deny that the payment of \$179,411.40, made by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the said bill of com-

plaint, was made by the said administratrix voluntarily; deny that the said payment was made with the intent, or object, or design of depriving the complainant of its or any right or interest of, in or to said undivided one-half of 10,067.2 acres of land, or in or to any portion of the said land, or of its or any right, interest or equity in or to such portion of the proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by the said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said action No. 4424, or otherwise; deny that the complainant had any such or any right, interest or equity of, in or to the said land, or any portion thereof, or the said proceeds, or any portion thereof; deny that with such or any such intent, purpose, object or design, or to obtain an unfair or unconscionable or any advantage over the said complainant, or any persons or person, the said Teresa Bell, upon making such payment, or otherwise, obtained from the said Mercantile Trust Company of San Francisco and the said San Francisco Savings Union, or either of them, the instrument in writing described in said paragraph "11th" of the said bill of complaint; deny that the making or execution of such conveyance or instrument was contrary to or in violation of said judgment in said action No. 4424, or of the provisions of said judgment or any thereof, or of the trust therein adjudged or declared, or of any trust, or was wrongful or fraudulent, or unlawful or in violation of the rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424 and under said Judgment dated June 29th, 1901, or under either of them, or of any right or interest of the said U. S. Oil & Land Company or of any other persons or person; deny that the said U. S. Oil & Land Company has or ever had any right or interest under the said two judgments, or either of them; deny that said pretended, and actual, sale and transfer by said Mercantile Trust Company of San Francisco was made under or in pursuance of a com-

bination or conspiracy entered into by the said Mercantile Trust Company of San Francisco, San Francisco Savings Union and said Teresa Bell, or any of them, with the wrongful, unlawful or fraudulent or any intent, object, purpose or design to defraud the said U. S. Oil & Land Company out of its or any right, title or interest in said 10,067.2 acres of land, or any portion thereof, or out of its or any right, title or interest in or to the proceeds, or any of the proceeds, of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or otherwise, or at all, or under or in pursuance of any combination or conspiracy at all, or to evade or defeat the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of any proposed sale in certain newspapers, or any provisions of said judgment and decree; deny that said pretended, and actual, sale and transfer was made secretly, or without any notice whatever thereof, or in pursuance or execution of the said or any combination or conspiracy or with the fraudulent, or any, intents, objects, purposes or designs aforesaid, or any of them; deny that said pretended, and actual, sale and transfer was a fraud upon the complainant, or any fraud at all or contrary to or in violation of said decree in said action No. 4424; deny that the claim made by the defendants in this action that the said pretended, and actual, deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell, as such administratrix, the title of, in and to said tract of land consisting of 10,067.2 acres, including any and all rights, title and interest of said complainant U. S. Oil & Land Company, is without merit or wrongful or unlawful, or contrary to or in conflict with said judgment in said action No. 4424, or a fraud upon the said complainant, or any fraud at all, or was or is made with the wrongful or fraudulent or unlawful or any intents, purposes or designs aforesaid, or any of them, or of defrauding the said U. S. Oil & Land Company, or its successors or grantees or any of them,

out of its or any interest in or title to an undivided one-half, or any portion, of the said 10,067.2 acres of land, or any part thereof; deny that said Mercantile Trust Company of San Francisco has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424 or has, as alleged in the said bill of complaint, attempted to transfer or dispose of the said tract of 10,067.2 acres of land, or any thereof, contrary to or in violation of the trust declared or set forth in said decree in said action No. 4424, or with the wrongful, or unlawful, or fraudulent or any intents, objects, purposes or designs aforesaid, or any of them; deny that said George Staacke had no other right, title or interest whatever in or to said lands of any part thereof or to any of the proceeds of the sale of said lands or any part thereof than that of trustee for the benefit of the complainant, U. S. Oil & Land Company, its successors or assigns; deny that said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge of the title or any title of complainant to an undivided one-half of said 10,067.2 acres and tract of land, as pleaded and alleged in paragraph "14th" of the said bill of complaint, or to any interest in any portion of the said land, or of all or any of the facts and matters set forth and alleged in said paragraph "14th"; deny the truth or existence of any of the said facts and matters, as follows: deny that said tract, piece or parcel of land of 10,067.2 acres or any part thereof had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener, or either of them, on or about the 7th day of March, 1889, or at any time, in trust for the benefit of John S. Bell; deny that the said John S. Bell then, or at any time subsequent to the 23rd day of August, 1887, was the owner of the said tract, piece or parcel of land, or any part thereof; deny that said Grover and Rosener, or either of them had on and prior to March 7th, 1889, or at any time, agreed to reconvey said tract of land or any part thereof to said John S. Bell. Deny that said George Staacke received or accepted the deed and

conveyance executed to him by said Grover and Rosener and mentioned in paragraph "14th" of the said bill of complaint, or any deed, or held the title to said 10,067.2 acres of land, or any part thereof, as trustee for John S. Bell, and not otherwise, or at all, from the time he received the same to the time of his death, or at any time; deny that the said deed was made with the fraudulent or unlawful or any intent, object, purpose or design to defeat said, or any trust, upon which said land had been conveyed as aforesaid, or otherwise, by said Grover and Rosener to said George Staacke, or to deprive the plaintiff, or the successors in interest of John S. Bell, or any of them, of the benefits of said or any trust or of their or any rights thereunder or otherwise; deny that each and all, or any of the defendants, and particularly deny that these defendants, W. P. Hammon and F. C. van Deinse, or either of them, ever had any notice of the right, title and interest, or of any right, title or interest of the complainant of, in or to an undivided one-half, or any portion, of said tract or piece of land consisting of 10,067.2 acres of land, or any part thereof; deny that the entry of these defendants mentioned and described in paragraph "15th" of the said bill of complaint was wrongful or unlawful, or that the said entry or any acts of the said defendants on the said lands have been done with any wrongful or unlawful intent, object, purpose or design whatsoever, or will greatly or irreparably or at all injure or damage the complainant; deny that the complainant was or is entitled, as owner in fee or otherwise or at all, to any rents heretofore or hereafter to be collected from the tenants on the said tract of land; deny that on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company of San Francisco and San Francisco Savings Union, or any of them, combined or conspired together, or at all, or made or entered into a secret or any combination or conspiracy to evade or defeat the said decree in said action No. 4424, or to deprive the said U. S. Oil & Land Company of its or any right, title or interest in

or to an undivided one-half, or any portion, of said tract of land consisting of 10,067.2 acres or of its or any interest in or right to the proceeds or all or any part thereof that might be obtained by or from a sale of said tract of 10,067.2 acres, or otherwise, or at all, or did in pursuance of said or any combination or conspiracy, or with the wrongful, unlawful or fraudulent or any intent, object, purpose or design of evading or defeating said decree in said action No. 4424 or of depriving said U. S. Oil & Land Company of its or any right, title or interest in or to an undivided one-half, or any portion, of said tract of land, or any part thereof, or of any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, or otherwise or at all, have or cause said deed dated May 26th, 1908, to be made or executed or thereafter recorded as shown, averred or alleged in paragraph "11th" of the said bill of complaint, or otherwise, or at all; deny that said deed was so as aforesaid, or otherwise, or at all, made, executed or delivered by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union under or in pursuance or execution of said or any wrongful or unlawful combination or conspiracy, or any combination or conspiracy whatsoever.

III. Deny all and all manner of unlawful combination and conspiracy wherewith, or with notice or knowledge whereof, they are by the said bill of complaint charged.

Wherefore, these defendants jointly and severally pray that the complainant's bill of complaint may be dismissed and that the defendant's have and recover their costs and disbursements herein.

Chauncey S. Goodrich,

Solicitor for the said defendants.

Northern District of California, City and County of San Francisco.—ss.

A. E. Boynton, being first duly sworn, deposes and says:

That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W.

P. Hammon and F. C. Van Deinse, another of the defendants above named, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit of verification on behalf of the said W. P. Hammon; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein averred on his information or belief, and as to those matters that he believes it to be true.

A. E. Boynton,

Subscribed and sworn to before me this 28th day of November, A. D., 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

Chauncey S. Goodrich.

Northern District of California, City and County of San Francisco.—ss.

Chauncey S. Goodrich, being first duly sworn, deposes and says:

That he is the Solicitor and attorney at law of W. P. Hammon and F. C. Van Deinse, the defendants above named; that both of the said defendants, W. P. Hammon and F. C. Van Deinse, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit on behalf of the said defendants; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein averred on his information or belief, and as to those matters that he believes it to be true.

Chauncey S. Goodrich.

Subscribed and sworn to before me this 29th day of November, A. D., 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within plea, and fortifying answer of the defendants W. P. Hammon and F. C. van Deinse, is hereby admitted this 29th day of November, 1912.

Richards & Carrier,
James L. Crittenden,
Solicitors for Complainant.

(Endorsed) Filed Dec. 2, 1912, Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants W. P. Hammon and F. C. Van Deinse, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

December 30, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this thirtieth day of December, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 30th day of December, 1912, at and in said City and County of San Francisco.

(Seal)

Flora Hall,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within Replication by copy thereof, is hereby admitted this 30th day of December, 1912.

Chauncey S. Goodrich,

Solicitor for Respts. W. P. Hammon and F. C. Van Deirse.

(Endorsed.) Filed Dec. 31, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deirse for Judgment on Plea and Replication.

Come now the above named defendants, W. P. Hammon and F. C. Van Deirse, and show to this Honorable Court as follows:

That these defendants on the 29th day of November, A. D. 1912, served, and on the 2nd day of December, A. D. 1912, filed herein their joint and several plea to the whole of the bill of complaint of the above named complainant, U. S. Oil & Land Company, together with their joint and several answer in support of such plea;

that on the 30th day of December, A. D. 1912, the said complainant served upon these defendants, and thereafter filed herein its alleged general replication to the said supporting answer; that the said complainant has not taken issue on the said plea.

Wherefore, these defendants jointly and severally move the Court for judgment on the said plea and replication, for the reason that the complainant has not taken issue on the said plea, and that the said replication is no reply in law thereto.

Chauncey S. Goodrich,

Solicitor for the said Defendants.

(Endorsed.) Filed March 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deinse for Judgment on Plea and Replication.

Come now the above named defendants, W. P. Hammon and F. C. Van Deinse, and show to this Honorable Court as follows:

That these defendants on the 29th day of November, A. D. 1912, served, and on the 2nd day of December, A. D. 1912, filed, herein their joint and several plea to the whole of the bill of complaint of the above named complainant, U. S. Oil & Land Company, together with their joint and several answer in support of such plea; that on the 30th day of December A. D. 1912, the said complainant served upon these defendants and thereafter filed herein its alleged general replication to the said supporting answer; that the said complainant has not taken issue on the said plea;

Wherefore, these defendants jointly and severally move the Court for judgment on the said plea and replication, and for the reason that the complainant has not taken issue on the said plea, and that the said replication is no reply in law thereto.

Chauncey S. Goodrich,

Solicitor for the said Defendants.

(Endorsed.) Filed March 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: the January Term, A. D. 1913, of the District Court of the United States for the Southern District of California, Southern Division, held in the Court room thereof at Los Angeles on Monday, the 10th day of March, 1913:

Present—The Honorable Frank H. Rudkin, District Judge. No. 140 Civil S. D. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants.

This cause coming on this day to be heard on the joint and several pleas of defendants W. P. Hammon and F. C. Van Deinse to the bill of complaint; James L. Crittenden, Esq., and C. F. Carrier, Esq., appearing as counsel for complainant; Chauncey S. Goodrich, Esq., appearing as counsel for defendants; and the joint and several motion of defendants W. P. Hammon and F. C. Van Deinse for judgment in favor of defendants on the plea of said defendants and complainant's replication thereto having been filed in open Court; and said motion for judgment having been argued in support thereof by Chauncey S. Goodrich, Esq., of counsel for defendants, and in opposition thereto by James L. Crittenden, Esq., of counsel for complainant, and said cause having been submitted to the Court for its consideration and decision on said motion and the oral argument thereof; it is now by the Court ordered that said motion for judgment on the pleadings be, and the same hereby is denied, and that defendants be and they hereby are assigned to answer the bill of complaint on or before April 7th, 1913; and counsel having thereafter agreed to answer earlier than said date; it is ordered that said cause be and the same hereby is continued until Wednesday, the 19th day of March, 1913, at 10:30 o'clock a. m., to be heard separately on the question of certain judgments in the State Courts, provided said answer shall have been filed theretofore.

(Endorsed.) Copy Order Denying Motion for Judgment on the Pleadings. Filed July 23, 1913. Wm. M.

Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

At a stated term, to-wit: the January Term, A. D. 1913, of the District Court of the United States, in and for the Southern District of California, Southern Division, held in the Court room thereof at Los Angeles on Monday, the 10th day of March, in the year of our Lord, one thousand nine hundred and thirteen:

Present—The Honorable Frank H. Rudkin, District Judge. No. 140 Civil S. D. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants.

This cause coming on this day to be heard on the motion of defendants Teresa Bell et al. for hearing on the pleas and answer of said defendants, C. F. Carrier, Esq., and James L. Crittenden, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants Teresa Bell et al.; and said motion having been argued in support thereof by T. Z. Blakeman, Esq., and Peter J. Crosby, Esq., of counsel for said defendants, and in opposition thereto by James L. Crittenden, Esq., of counsel for complainant, and said cause having been submitted to the Court for its consideration and decision on said motion upon the oral argument thereof; it is ordered that said motion be and the same hereby is denied, and that said defendants be and they hereby are assigned to answer the bill of complaint; and it is further ordered that said cause be and the same hereby is continued until Wednesday, the 19th day of March, 1913, at 10:30 o'clock a. m., to be heard separately on the question of certain judgments in the State Courts, providing said answer shall have been filed theretofore.

(Endorsed.) Copy Order Denying Motion for Hearing on the Pleas, etc. Filed July 23, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Answer of W. P. Hammon and F. C. van Deinse.

These defendants, W. P. Hammon and F. C. van Deinse, now and at all times hereafter saving and reserving unto themselves all and all manner of benefit and advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties and other imperfections in the complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, jointly and severally answering say:

As a first defense to the whole of the said bill of complaint, heretofore presentable by plea in bar, these defendants say:

I. That subsequent to the 6th day of March, 1901, and within the time and in the manner permitted and prescribed by the laws of the State of California, George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, defendants in the action mentioned and described in paragraph "7th" of the said bill of complaint, gave notice of their intention to move for a new trial of the said action; that thereafter on the 7th day of June, 1901, the said motion for a new trial was made by the said defendants in the said action, and thereupon and on the said day the Superior Court of the State of California, in and for the County of Santa Barbara, made and entered in the said action its order denying the said motion; that thereafter, on the 8th day of June, 1901, and synchronously with the service and filing of their notice of appeal from the decree in the said action, mentioned and described in paragraph "8th" of the said bill of complaint, and within the time and in the manner permitted and prescribed by the laws of the State of California, the said George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, served and filed in the said action their notice of appeal to the Supreme Court of the State of California from the said order denying their said motion for a new trial, and thereafter prosecuted such appeal; that thereafter and prior to the 16th day of Sep-

tember, 1902, John S. Bell, the plaintiff in the said action and the respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss both the said appeals; that the said Supreme Court on the 16th day of September, 1902, after hearing of the said motions of the said plaintiff and respondent, made and entered its order and judgment dismissing the said appeal from the decree in the said action, on the sole ground that notice of such appeal had been prematurely given by the appellants, but denying the said motion to dismiss the said appeal from the said order denying the said motion for a new trial of the said action; that thereafter the said defendants continued to prosecute their said appeal from the said order denying the said motion for a new trial of the said action; that on the 30th day of November, 1903, after hearing of the said appeal, the said Supreme Court of the State of California made and entered its order and judgment reversing the said order denying the said motion for a new trial and remanding the said action to the said Superior Court of the State of California, in and for the County of Santa Barbara; that on the 28th day of December, 1903, the said Supreme Court amended its said judgment, reversing the said order by its judgment and decree then made and entered, so that the said order and judgment, as so amended on the said 28th day of December, 1903, was and is in the words and figures as follows:

"In the Supreme Court of the State of California.
L. A. No. 1115. Bank.

John S. Bell, Resp., vs. George Staacke et al., App.
On Appeal From the Superior Court in and for the
County of Santa Barbara.

And now at this day this cause being called and having been heretofore submitted and taken under advisement and all and singular the law and the premises being fully considered the opinion of the Court herein is delivered by the Court.

Whereupon, it was adjudged and decreed by the Court on the 30th day of November, 1903, that the order

of the Superior Court in and for the County of Santa Barbara in the above entitled cause denying the appellant's motion for a new trial is reversed and cause remanded subsequently on the 28th day of December, 1903, the judgment heretofore rendered herein in this Court is hereby amended so as to read as follows:

The order denying the motion for a new trial is reversed except as to the issues covered by the twenty-third paragraph of the findings, to-wit: That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15 and paragraph 4 of the conclusions of law and except as to the issues covered by the additional findings and cause remanded for new trial of all other issues and appellant to recover costs of appeal."

That the said Supreme Court of the State of California, by its judgment as so amended, ordered a new trial, by the said Superior Court of the State of California, in and for the County of Santa Barbara, of all the issues made by the pleadings in the said action save those covered by the findings particularly excepted by the said decree of amendment of the said Supreme Court; that, under the laws of the State of California, the said judgment ordering as aforesaid a new trial of the said action forever vacated the said decree in the said action theretofore made by the said Superior Court of the State of California, in and for the County of Santa Barbara, mentioned and described in paragraph "7th" of the said bill of complaint.

II. That the new trial of the said action ordered as aforesaid by the said Supreme Court of the State of California was had in the said Superior Court of the State of California, in and for the County of Santa Barbara, during the months of April and May, 1904; that at such new trial the plaintiff in the said action, the said John S. Bell, and his grantee, James L. Crittenden, the alleged grantor of the complainant herein, U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of

the issues in the said action as to which a new trial had been ordered as aforesaid by the said Supreme Court, were submitted by the respective parties to the said action, including the said plaintiff therein, John S. Bell, and by the said James L. Crittenden, to the said Superior Court for decision; that thereafter, on the 17th day of October, 1904, the said Superior Court made, and on the 26th day of October, 1904, filed, its decision in the said action, covering the said issues, which said decision was and is in the words and figures as follows:

"In the Superior Court of the County of Santa Barbara, State of California. No. 2826.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as Administratrix with the will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

Findings.

The trial of the issues, as to which a new trial was ordered by the Supreme Court, in the above-entitled action, came on regularly before the Court sitting without a jury. The plaintiff appeared by his attorneys Jas. L. Crittenden, Esq., and Messrs. Richards & Carrier; T. Z. Blakeman, Esq., with whom was also associated Messrs. Canfield & Starbuck, appeared for the defendant Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, and the defendant George Staacke appeared by his attorneys Messrs. Canfield & Starbuck. The cross-complaint of the defendants was dismissed as to the defendant Louis Jones, and the trial of the action as between the plaintiff and the said defendant Jones was continued.

An order of Court was duly made and entered substituting Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, as defendant in the place and stead of Teresa Bell as special administratrix of the said estate of Thomas Bell, deceased, the said Teresa Bell as said special administratrix having been heretofore by the order of the Court duly made and entered substituted as defendant in the place and stead of John W. C. Maxwell and George

Staacke as executors of the last will of Thomas Bell, deceased.

Evidence oral and documentary was introduced in behalf of the respective parties aforesaid and thereupon after argument by the attorneys aforesaid for the respective parties, the whole case upon the issues aforesaid was submitted to the Court for its decision.

And the Court having considered the case, and being fully advised in the premises, makes its findings of fact and conclusions of law as follows:

The Court finds:

1. That on August 23d, 1887, plaintiff was the owner of the tract of land in said County of Santa Barbara bounded and described as follows, to-wit:

Property hereinbefore described on pages:

That on the 23d day of August, 1887, Thomas Bell was the owner of the tract of land in said County of Santa Barbara, being that portion of the Rancho de Los Alamos which is bounded and described as follows, to-wit:

(Property described on pages 6, 7, 8 and 9.)

That on said 23d day of August, the plaintiff and said Thomas Bell sold and conveyed to Dwight W. Grover said two tracts of land for the total sum and price of three hundred and fifty thousand dollars, of which \$270,000 was the price of the tract of land hereinabove first described, and \$80,000 the price of the other tract; \$70,000 of the total price was paid in cash and the balance of \$280,000 was paid by four notes executed by said Grover in favor of said Thomas Bell for \$54,000 each, dated on said day, and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land first above described in favor of Thomas Bell, and by four promissory notes executed by said Grover in favor of said Thomas Bell for \$16,000 each, dated on said day and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land second above described in favor of said Thomas Bell.

1907

1907-08

1908-09

1909-10

1910-11

1911-12

1912-13

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1914

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1917

113:

as follows:

12, after the word "pages:" therein

insert the words and figures following, to-wit:

"123 and 124 of this Transcript (being the
12,000-acre tract)."

21 strike out the words and figures "5, 7, 8 and
and

insert in the place and stead thereof the words and
figures following, to-wit:

"126 and 127 of this Transcript (being the
4,000-acre tract)."

That on the 27th day of August, 1887, the plaintiff and said Thomas Bell executed and delivered to each other an agreement in writing in words and figures following, to-wit:

"AGREEMENT made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California,

"WHEREAS, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of Three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely, two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand dollars on that of Thomas Bell, were made to Thomas Bell.

"AND WHEREAS, the said Thomas Bell has heretofore from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed having been made, examined and found correct, and it is settled that the said John S. Bell is now indebted to said Thomas Bell in the sum of Twenty-five thousand five hundred and twenty-nine 5-100 dollars in United States gold coin which sum is to bear interest from this date at the rate of six per cent per annum.

"NOW it is agreed between said parties that the said Thomas Bell shall hold said notes and said mortgage for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said John S. Bell, with like interest from the date of making the same after which he shall, on demand, assign the same to said John S. Bell.

"This agreement shall bind and be for the benefits of the heirs, executors, administrator and assigns of both of said parties.

"Witness our hands the day and year first above written.

Thomas Bell
John S. Bell."

That on or about the 25th day of August, 1887, the said Dwight W. Grover granted, bargained, sold and conveyed by deed to Samuel Rosener an undivided 3-5 of all the land and real property hereinbefore described.

2. That neither the said Grover nor the said Rosener made payment of the first of said four notes of \$54,000 each or of the first of said four notes of \$16,000 each or of any part or portion thereof, nor did they, the said Grover and Rosener, or either of them, pay any part or portion of any of said notes given as aforesaid for the balance of the purchase price of the said two tracts of land.

That after the maturity of the first of the said notes and prior to the 7th day of March, 1889, it was agreed between the said Thomas Bell and the said Grover and Rosener that the said Grover and Rosener should convey to George Staacke, who was the confidential clerk and agent of the said Thomas Bell, the land hereinabove first described, except such portions thereof as the said Grover and Rosener had sold, and that said Grover and Rosener should assign and transfer unto said Thomas Bell all notes and mortgages held and taken by them for deferred payments of the purchase price of such portions of said tract of land hereinabove first described as they,

the said Grover and Rosener, had sold, and that the said Thomas Bell, should in consideration thereof, release the said Grover and Rosener from the obligation of said four notes of \$54,000 each and of the mortgage given as aforesaid to secure the payment thereof.

That on March 7th, 1889, in pursuance of the agreement last aforesaid, the said Grover and Rosener, with the knowledge and consent of the plaintiff John S. Bell, and for the purpose of obtaining a release from the obligation of said four notes of \$54,000 each and of the said mortgage to secure them, and for no other purpose whatever, executed a deed to said George Staacke of all the tract of land first hereinabove and in said mortgage described, excepting therefrom all the town lots sold and conveyed by deed by said John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos surveyed for J. B. Shaw and John S. Bell, September 15, 1876, W. W. Bagster, surveyor," also excepting therefrom the land conveyed or donated prior to June 7th, 1887, by John S. Bell for county roads, streets and railroads and cemetery plot adjoining said town of Los Alamos conveyed by said John S. Bell, also excepting therefrom certain described parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosener since August 23d, 1887.

That on the 7th of March, 1889, and in pursuance of the agreement aforesaid between the said Grover and Rosener, and Thomas Bell, the said Grover and Rosener, with the knowledge and consent of the said John S. Bell, assigned and transferred to the said Thomas Bell all notes and mortgages taken and held by them as security for the deferred payments on portions of the said tract of land hereinabove first described which they, said Grover and Rosener, had sold since the 23d day of August, 1887.

That upon the delivery of the said deed of March 7th, 1889, by Grover and Rosener to said George Staacke, and in consideration thereof, the said Thomas Bell delivered to said Grover and Rosener the said four notes

for \$54,000 each secured by the said mortgage on the tract of land hereinabove first described, and released and satisfied said mortgage and dismissed the suit which he had begun for the foreclosure thereof.

That the said George Staacke paid nothing to said Grover and Rosener for said deed and conveyance to him, but was the nominee of said Thomas Bell in regard thereto, and accepted said deed and conveyance solely as the nominee of said Thomas Bell and in trust to hold the land thereby conveyed first for the use and benefit of Thomas Bell, to-wit: as security for the payment by the plaintiff John S. Bell to said Thomas Bell of the balance then due to said Thomas Bell upon all sums of money which had theretofore been advanced and loaned by the said Thomas Bell to the said John S. Bell and for all sums of money which the said Thomas Bell should thereafter loan or advance to the said John S. Bell, with interest thereon, and second for the use and benefit of the said John S. Bell, to-wit: to convey to the said John S. Bell the said tract of land or all that remained thereof after the payment of all sums then due to said Thomas Bell by said John S. Bell, and all advances and loans thereafter made by said Thomas Bell to said John S. Bell.

That at the time of the said execution of the said conveyance by said Grover and Rosener to said Staacke, it was agreed by and between the plaintiff John S. Bell and the said Thomas Bell that said Staacke should hold the land hereinabove first described, with the exceptions therefrom hereinabove noted, *as security* for the payment by the plaintiff to said Thomas Bell of all sums of money which had theretofore been advanced by said Thomas Bell to the plaintiff, or which were then due and owing by said John S. Bell to said Thomas Bell, and for all sums of money which the said Thomas Bell should thereafter advance or loan to the said John S. Bell, with interest thereon; and that after the payment of all such sums with interest thereon by John S. Bell to the said Thomas Bell, the said Staacke should convey the said land, hereinabove first described, or what remained

thereof, to the said John S. Bell.

That after the date of the said agreement between John S. Bell and Thomas Bell, dated August 27th, 1887, and until the date of his death, the said Thomas Bell continued from time to time at the request of John S. Bell to make advances and loans of money to him, the said John S. Bell, upon the security, first of the said four notes of \$54,000 each and the mortgage made to secure the same, and after the surrender thereof and the conveyance of the said tract of land hereinabove first described by Grover and Rosener to George Staacke upon the security of the said tract of land; and the said John S. Bell accepted and received all the said advances and loans of money by the said Thomas Bell to him with the knowledge at the time the said loans and advances were made, that Thomas Bell made the said loans and advances upon the security aforesaid.

That by judgment heretofore, to-wit: on the 9th day of July, 1901, made and entered in this action upon the cross-complaint of the defendant the said administratrix of the estate of Thomas Bell, deceased, it was determined that there was at the date of the death of Thomas Bell, to-wit: on October 16th, 1892, a balance due from said John S. Bell, the plaintiff herein, to the said Thomas Bell in the sum of Fifty-two thousand one hundred and twenty and 15-100 (\$52,120.15) dollars for the said loans and advances made by the said Thomas Bell to the said John S. Bell, including the said balance of \$25,529.05 mentioned in the said agreement of August 27th, 1887, (with interest on said balance and on said other loans and advances according to the said agreement of August 27th, 1887. And the said defendant, the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, recovered in this action of the plaintiff John S. Bell, on the 9th day of July, 1901, judgment against the said John S. Bell for the said balance of \$52,120.15, and for interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892.

That the said Grover and Rosener upon the execution

of said deed of March 7th, 1889, by them to said George Staacke, delivered possession to said George Staacke of all the tract of land hereinabove first described, except the portions thereof mentioned in said deed as reserved and excepted, but the possession of said Staacke was at all times thereafter and until the death of Thomas Bell, subject to the control of said Thomas Bell, and said Thomas Bell at all times after the execution of said deed by Grover and Rosener to Staacke, with the knowledge and consent of John S. Bell, exercised control and management over said tract of land and caused the rents and products thereof to be delivered to him at San Francisco. That the said rents and the proceeds of said products were by Thomas Bell placed to the credit of John S. Bell in his account which embraced the said loans and advances, and the said control and management of Thomas Bell was only because of and in aid of the lien upon said land existing in his favor for the balance due him upon said loans and advances made and to be made to said John S. Bell.

That no part of the said sum of \$52,120.15, or of the interest thereon, has been paid. That the whole of the said principal sum of \$52,120.15, and interest thereon from the 16th day of October, 1892, amounting to the sum of \$43,780.92 at the date hereof, is due and payable to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, upon the cross-complaint herein, and a lien exists in favor of the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, upon the said tract of land hereinabove first described, and conveyed to George Staacke by said deed of March 7th, 1889, for the payment of the said principal sum and interest, amounting to the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars, and for the accruing interest on the said sum of \$52,120.15.

3. That the said deed of March 7th, 1889, from Grover and Rosener to George Staacke was not executed and delivered by Grover and Rosener with the intent

and for the purpose of conveying back and in trust to convey back to the plaintiff the tract of land hereinabove first and in said deed described, and said deed was not accepted and received by said Geo. Staacke in trust for said purpose, except that said George Staacke did accept and receive the said deed in trust to convey to the plaintiff the said tract of land after payment had been made by the plaintiff to Thomas Bell of all sums due by him to Thomas Bell for moneys loaned and advanced, and to be loaned and advanced, to him by said Thomas Bell. That said George Staacke does not hold the naked legal title to said tract of land in trust for the purpose of conveying and to convey and deed the same to the plaintiff and for no other purpose.

That the plaintiff did not on or about the 7th day of March, 1889, enter into or take actual possession of all or any portion of the land mentioned and described in the plaintiff's amended and supplemental complaint, and the plaintiff has not, ever since the 7th day of March, 1889, and down to the appointment of a receiver in this action, or during any part of said time, remained or been in the actual possession, adverse or otherwise, as owner in fee simple or otherwise of said land or any portion thereof.

That the defendant George Staacke did not, in violation of any trust, or without the knowledge or consent of plaintiff, borrow of the San Francisco Savings Union \$60,000, and did not in violation of any trust or trust deed convey said land in trust to secure the payment of said \$60,000.

That George Staacke and Thomas Bell did not appropriate to their own use said \$60,000, but the whole of said sum, less the cost of Abstract and execution and recording of papers, was by Thomas Bell placed to the credit of plaintiff in his said account, and the plaintiff on February 12th, 1892, with full knowledge of the borrowing of said sum of \$60,000, ratified and approved the same and accepted and approved the crediting of the proceeds thereof to him in his account with said Thomas Bell.

That said John S. Bell was not the owner of the four notes of \$54,000 each executed by said Grover to Thomas Bell, and the mortgage given to secure them, except as the same were subject to the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinbefore set out. That said four notes and mortgages to secure them were not made and executed to Thomas Bell for the purpose of rendering the execution of releases and partial releases more convenient or easy.

It is not true that on or about the 6th of March, 1889, an oral agreement was made and entered into by and between said Grover, Rosener, John S. Bell and Thomas Bell, that said Grover and Rosener should deed and convey back to John S. Bell all or any of the land mentioned in the Amended and Supplemental Complaint, nor is it true that, hereafter and on or about the 6th day of March, 1889, John S. Bell and Thomas Bell made and entered into an oral agreement that any of said land should be conveyed back to John S. Bell by being first deeded and conveyed by said Grover and Rosener to George Staacke and then by said Staacke to John S. Bell.

That the deed of March 7th, 1889, was not made, executed and delivered to George Staacke, nor transfer of the 10,000 acre tract described therein made to said Staacke, with the intent and for the sole purpose of conveying and in trust to convey back to the plaintiff the said 10,000 acre tract or any part thereof, nor did said Staacke accept such conveyance for such sole purpose.

That the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinabove set out, was never rescinded by either, or by consent of both.

4. That the defendant George Staacke did not pay or give any consideration for the deed of conveyance of the tract of land, hereinabove secondly described, by the said Grover and Rosener to him, of date March 7th, 1889, but the said deed of said tract was made by the said Grover and Rosener to the said Staacke at the request of Thomas Bell, and in consideration of the sur-

render by Thomas Bell to the said Grover and Rosener of the said four notes of \$16,000 each, and of the release of the mortgage given by the said Grover to secure the said notes and the dismissal of the suit brought by Thomas Bell for the foreclosure of the said mortgage. That the possession of the said tract of land last hereinabove referred to was delivered by the said Grover and Rosener to the said George Staacke who was at the time the confidential clerk and agent of said Thomas Bell, and the said Thomas Bell thereafter continuously controlled and managed the said tract of land received all the rents and profits thereof.

5. That on the 8th day of March, 1893, the plaintiff herein caused to be filed and recorded in the office of the County Recorder of the said County of Santa Barbara a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the land and premises affected thereby.

Conclusions of Law.

The Court concludes that a lien exists upon the tract of land in the findings hereinabove first described, and conveyed by the deed of Grover and Rosener of March 7th, 1889, to George Staacke, in favor of the defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell, deceased, for the payment to her of the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars and accruing interest of \$52,120.15 thereof; And that the said administratrix defendant is entitled to a judgment of the Court in this action foreclosing the said lien and directing the sale to be made of the said tract of land, and out of the proceeds of such sale that there be paid first, the costs and expenses of such sale; second, the costs of suit and an appeal taxed in favor of the said defendant the administratrix and defendant George Staacke, and then the amount of the said lien, to-wit: the said sum of \$95,901.07 and accruing interest. And the balance of the proceeds of the sale, if any, to be paid to the plaintiff or his attorneys; And directing a judgment for deficiency

if the sale of the said land does not realize sufficient to pay said costs and expenses of sale and amount due the said defendant the administratrix, to be entered against the plaintiff John S. Bell.

The said defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell, deceased, is further entitled to a decree directing the defendant George Staacke to convey by proper and sufficient deed of conveyance to her as such administratrix the tract of land in the findings hereinabove secondly described.

Let judgment be entered accordingly.

Dated this the 17th day of October, 1904.

J. W. Taggart.

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That on the said 17th day of October, 1904, the said Superior Court made, and on the said 26th day of October, 1904, filed, and on the 28th day of October, 1904, entered, its judgment and decree, and order of sale, in the said action, in accordance with its said decision, which said judgment and decree, and order of sale, was an dis in the words and figures as follows:

"In the Superior Court of the County of Santa Barbara, State of California.

John S. Bell, Plaintiff,

vs.

No. 2826

George Staacke, Teresa Bell as the Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

Decree and Order of Sale.

The Court having made and filed herein its Findings of fact and conclusions of law, it is now by the Court ORDERED, ADJUDGED AND DECREED that there is now due and owing from the plaintiff John S. Bell to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, the sum of Ninety-five thousand one hundred and one and 7-100 (\$95,901.07) dollars, and that the said plaintiff John S. Bell is personally liable for the whole amount

thereof. That the said sum of \$95,901.07, and the costs of the said defendants to be taxed herein and their costs on appeal taxed at sum of \$608.50, is a valid lien upon the land and premises hereinafter set forth and described. That the defendant George Staacke holds the legal title of the said land and premises in trust, first, as security for the payment of the sum aforesaid and the costs of the said defendants to be taxed herein, and second, in trust for the use and benefit of the plaintiff John S. Bell.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all and singular the land and premises first mentioned in the Complaint and in the findings herein, and hereafter described, or so much thereof as may be sufficient to raise the amount due to the said defendant as aforesaid, and interest and costs of suit and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public auction by the Commissioner herein appointed to make such sale, in the manner prescribed by law and according to the course and practice of this Court, and that the said Commissioner after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the said land and premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JESSE L. HURLBUT, of the City of Santa Barbara, be and he is hereby appointed a Commissioner of this Court to sell the said land and premises hereinafter described, and it is further ORDERED that before entering upon his duties as such Commissioner he shall take the oath and give an undertaking in the sum of One Thousand Dollars, all as required by law. That the said Commissioner, out of the proceeds of the said sale, retain his fees and disbursements and pay to the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, or to their respective attorneys, out of the proceeds of the said sale the sum of \$1085.15, costs of the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate

of Thomas Bell, deceased, in this suit and on appeal and accrued interest, and also pay to the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, or to her attorney, from the proceeds of the said sale the further sum of \$95,901.07, the amount so found to be due as aforesaid, together with interest on \$52,120.15 of said last sum at the rate of 7 per cent per annum from the date of this decree or so much thereof as the said proceeds of the sale will pay. That the plaintiff and all persons claiming or to claim from or under him, and all persons having liens subsequent to said conveyance of March 7th, 1889, by Grover and Rosener to George Staacke, by judgment or decree upon the land hereinafter described, and their personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree and their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of the notice of the pendency of this action with the Recorder of the County of Santa Barbara, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said land and premises and every part and parcel thereof from and after the delivery of said Commissioner's deed.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers of the said land and premises at such sale be let into possession thereof and that any of the parties to this action who may be in possession of said premises or any part thereof, and any person who since the commencement of this action, has come into possession under them, or either of them, deliver possession thereof to said purchaser or purchasers, on production of the Commissioner's deed for such land and premises, or any part thereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the moneys arising from the said sale shall be insufficient to pay the amount so found due the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased,

as above stated with interest and costs as herein provided, and expenses of sale as aforesaid, said commissioner specify the amount of such deficiency and balance due the said defendant in his return of said sale, and that on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against the plaintiff John S. Bell, and that the said plaintiff pay to the said defendant the amount of such deficiency and judgment with interest thereon at the rate of 7 per cent per annum from the date of said last mentioned return and judgment, and that the said defendant the administratrix have execution therefore.

The lands and premises directed to be sold by this decree are situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows:

(Property described on pages 6, 7, 8 and 9.)

IT IS FURTHER ORDEDED, ADJUDGED AND DECREED that the defendant George Staacke, upon tender to him, execute and deliver to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, a deed of conveyance of the tract of land in the findings herein secondly described, to-wit: All that tract of land situate in the County of Santa Barbara, State of California, bounded and described as follows, to-wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la Guerra to Albert Packard on the 26th day of June, A. D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the Northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose de la Guerra to the said Jose Antonio Estrada; thence running southerly

along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning, containing about Four Thousand acres of land.

FURTHER ORDERED AND ADJUDGED that the defendants have and recover of the plaintiff their costs in the sum of \$476.65.

Dated this 17th day of October, 1904.

J. W. Taggart, Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That the said judgment and decree, and order of sale, has never been amended, modified, vacated or set aside or in any way altered, impaired or affected, and the same became and is final and conclusive upon the parties to the said action and their assigns.

That the plaintiff in the said action, the said John S. Bell, gave notice of his intention to move for a new trial of the said action, and thereafter in pursuance of such notice made his motion for such new trial; that thereafter and after hearing of the said motion, and on or about the 24th day of June, 1905, the said Superior Court of the State of California, in and for the County of Santa Barbara, made, filed and entered its order in the said action denying the said motion for a new trial thereof; that the plaintiff in the said action, the said John S. Bell, and his said grantee, James L. Crittenden, the alleged grantor of the complainant herein, thereupon made and prosecuted two several appeals to the said Supreme Court of the State of California, one thereof from the said judgment and decree, and order of sale, made as aforesaid on the 17th day of October, 1904, the other thereof from the said order denying the motion of the said plaintiff for a new trial of the said action, made as aforesaid on or about the 24th day of June, 1905.

III. That thereafter and prior to the 2nd day of January, 1906, the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, defendant in the said action and respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss the

said appeal of the said John S. Bell from the said judgment and decree, and order of sale, made, filed and entered as aforesaid in the said action; that the said Supreme Court on the 2nd day of January, 1906, after hearing of the said motion of the said defendant and respondent, made and entered its order and judgment dismissing the said appeal of the said plaintiff and appellant, John S. Bell, from the said judgment and decree, and order of sale; that on the 22nd day of July, 1907, after hearing of the said appeal of the said John S. Bell from the said order denying his said motion for a new trial of the said action, the said Supreme Court made and entered its order and judgment affirming the said order denying the said motion.

IV. That none of the said four several judgments, orders and decrees of the Supreme Court of the State of California, made as aforesaid on the 16th day of September, 1902, the 28th day of December, 1903, the 2nd day of January, 1906, and the 22nd day of July, 1907, respectively, has ever been reversed, amended, modified or in any way altered, or its effect controlled or otherwise at all affected; that the same, since the respective dates thereof, have all been and now are final; that the effect thereof was and is to reverse, vacate and render void and of no effect that certain judgment and decree of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action, pleaded and set out in the said paragraph "7th" of the bill of complaint herein, and to give full force, effect and finality to that certain judgment and decree, and order of sale, of the Superior Court, made as aforesaid in the said action on the 17th day of October, 1904, and hereinbefore pleaded and set forth, and validity to all acts done under and in pursuance of such judgment and decree and order of sale; that in and by its four several judgments, orders and decrees the said Supreme Court of the State of California claimed, assumed and exercised, and it had, jurisdiction of and over each and all of the appeals, questions and matters therein severally presented, decided, adjudged, ordered and decreed, and

particularly jurisdiction to entertain, hear, pass upon, review, and grant the said appeal taken by the said George Staacke, individually, and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, from the said order, made as aforesaid on the 7th day of June, 1901, denying their said motion for a new trial of the said action, and to remand the said cause to the said Superior Court of the State of California, in and for the County of Santa Barbara, for a new trial of all issues made therein save those expressly excepted as aforesaid, and asserted and upheld the jurisdiction of the said Superior Court to entertain, hear and pass upon the said motion of the said two defendants for a new trial of the said action and thereafter, upon the said remand of the said cause, to re-try all the issues made in the said action save those expressly excepted as aforesaid by the said Supreme Court, and to make, file and enter in the said action the decision and the judgment both dated the 17th day of October, 1904, hereinbefore pleaded and set forth; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to re-try the said issues and to make the decision and judgment last hereinabove mentioned; that in passing upon and determining the said several four appeals, the said Supreme Court expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the several four opinions and decisions of the said Supreme Court, supporting, announcing and directing its said four several judgments, orders and decrees upon such appeals, respectively, appearing respectively, under the caption "Bell v. Staacke", in Volume 137 of the official reports of the said Supreme Court, at pages 307 to 314, both inclusive, in Volume 141 of such reports, at pages 186 to 204, both inclusive, in Volume 148 of such reports, at pages 404 to 407, both inclusive, and in Volume 151 of such reports, at pages 544 to 548, both inclusive, reference to which said opinions, decisions and reports are hereby expressly made in order that the same may be deemed hereby in-

corporated herein as though the same were set out at length in this answer; that the plaintiff in the said action, John S. Bell, and the said claimants under him, submitted to the jurisdiction of the said Supreme Court and the said Superior Court, respectively, upon said several appeals and said re-trial.

V. That on the —— day of February, 1906, an order of sale was issued out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon the said judgment and decree, bearing date the 17th day of October, 1904, hereinbefore pleaded and set forth, to Jesse L. Hurlbut, of the City of Santa Barbara, the Commissioner named and appointed therein to sell the land and premises in the said judgment and decree, and also in the bill of complaint herein, particularly described; that the said Jesse L. Hurlbut qualified as such Commissioner as required by the said judgment and decree and order of sale; that thereafter, on the 5th day of March, 1906, the said Commissioner made and, in pursuance of and in accordance with the said judgment and decree and the said order of sale, after due and legal notice of sale given according to law, sold at public auction, at the place and hour required by law, all the said land and premises to the highest bidder at such sale, to-wit, to the defendant herein, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, for the aggregate of the sum and amount due and decreed to such administratrix by and under the terms of the said judgment and decree, together with the costs therein awarded to the defendants in the said action, the fees of the said Commissioner, and all the costs and expenses of the said sale, and thereafter on the said day made, executed and delivered to the said administratrix his certificate of the said sale and filed for record a duplicate of such certificate in the office of the County recorder of the said County of Santa Barbara; that after the lapse of one year and on the 8th day of April, 1907, no redemption having theretofore been made of such land or premises, or any part or portion thereof, the said Commissioner, under and in accord-

ance with law, made, executed and delivered to the said administratrix a deed of conveyance of all the said land and premises, and the said administratrix thereupon forthwith filed the same for record in the office of the County Recorder of the said County of Santa Barbara, in Book 117 of Deeds, at page 332, of the records of said county, and immediately entered into possession of all the said land and premises, except the ranch residence, one corral and the garden, and about thirty-five (35) acres of land surrounding the said residence, and ever since has continued in complete, open and peaceable possession of all the said land and premises, save such exceptions; that at the date of such entry by the said administratrix the said ranch residence, corral, garden and surrounding thirty-five (35) acres were in the possession of the said plaintiff in the said action, John S. Bell, and his wife, Kate M. Bell, and they so continued in such possession until the 14th day of January, 1911, at which last named date the said administratrix recovered possession of all the same by means of a writ of assistance issued in her favor out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon an order of the said Superior Court therefor, made and entered in the said action on the 22nd day of March, 1909; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to make the said order; that ever since the said 14th day of January, 1911, the said administratrix has continued in complete, open and peaceable possession of all the said ranch residence, corral, garden and surrounding thirty-five (35) acres; that the effect of the said sale, and of the execution, delivery and recordation as aforesaid of the said duplicate certificate of sale and the said deed, was to establish and vest and they did forthwith establish and vest the title of all the said land and premises in the said estate of Thomas Bell, deceased, free and clear of any claim, lien, right, title, interest or estate whatsoever, of the said plaintiff in the said action, John S. Bell, or of any grantee or successor in interest of the said plaintiff; that the said John S. Bell and Kate M.

Bell, his wife, appealed to the said Supreme Court of the State of California from the order of the said Superior Court granting the aforesaid writ of assistance; that on the 9th day of January, 1911, after hearing of the said last mentioned appeal, the said Supreme Court made and entered its order and judgment affirming the said order granting the said writ; that the said order and judgment of affirmance of the Supreme Court has never been vacated, amended, modified or qualified, and the same has become and is final; that the said Supreme Court had jurisdiction to make the said judgment; that in passing upon and determining the said last mentioned appeal the said Supreme Court again expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the Superior Court of the State of California, in and for the County of Santa Barbara, as aforesaid, in its opinion and decision supporting, announcing and directing its said judgment affirming the said order granting the said writ of assistance, appearing in Volume 159 of the official reports of the said Supreme Court, at pages 193 to 197, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this answer.

VI. That the deed mentioned in paragraph "9th" of the bill of complaint herein, executed by George Staacke to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the County of Santa Barbara, State of California, was so executed and delivered for the sole purpose of obtaining a stay of execution of the said judgment and decree mentioned and set out in paragraph "7th" of the bill of complaint herein, pending the said respective appeals of the said defendants to the Supreme Court of the State of California, from the said judgment and decree and from the said order denying a motion for a new trial of the action wherein the same had been rendered, and for no other purpose, under and in accordance with law, and particularly in compliance with the

terms and provisions of Section 944 of the Code of Civil Procedure of the State of California, reading as follows:

"If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court."

That on the 28th day of December, 1903, upon the granting as aforesaid by the Supreme Court of a new trial of the said action, and the consequent vacation as aforesaid of the said judgment and decree, the said deed became and ever since has been void and ineffective for any purpose whatsoever.

VII. That the payment of \$179,411.40, made on or about the 16th day of June, 1908, by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to the defendants herein, Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the bill of complaint herein, was made under and in accordance with the terms of a certain order duly made, filed and entered on the 12th day of June, 1908, by the Superior Court of the State of California, in and for the City and County of San Francisco, in the matter of the estate of the said Thomas Bell, deceased, then pending before the said Superior Court, which said order expressly authorized and directed such payment and was made upon the petition therefor of the said administratrix, filed in the said matter and Court on the 4th day of June, 1908, and upon a hearing thereof, and after notice of such hearing given in accordance with law; that such order has never been appealed from, or vacated or modified, and the same is final; that such payment was made for the sole purpose and with the sole intent of discharging the said property and premises from the lien and burden of that certain judgment and decree, in favor of the said Mercantile Trust Company of San Francisco and San Francisco Savings Un-

ion, pleaded and set forth in paragraph "10th" of the said bill of complaint, and for no other purpose and with no other intent; that such payment did discharge the said property and premises from such lien and burden and satisfied the said judgment and was made under and in accordance with such judgment.

VIII. That the complainant herein, U. S. Oil & Land Company, at all times well knew each and all of the events, occurrences, facts and matters hereinbefore recited, and the effect in law thereof, as and when the same respectively took place, and well knew, before it first acquired or assumed to acquire its alleged interest in the said land and premises, of the said then pending action and of the right, title, interest and estate of the said administratrix, and the said estate of Thomas Bell, deceased, therein and to and in the said land and premises; that these defendants claim and have and own an interest in the said land and premises and in certain portions thereof, as successors in interest by purchase for valuable consideration, of the said estate and of the heirs and devisees of the said Thomas Bell, deceased; that these defendants knew of the matters hereinbefore pleaded at the time they acquired their said interest and relied upon them to assure and secure the title of these defendants to such interest upon such purchase.

IX. That on the 9th day of March, 1910, the complainant, U. S. Oil & Land Company, commenced an action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Ro-

bina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 9th day of April, 1910, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 6th day of July, 1910; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7480 of civil actions in said Superior Court.

X. That on the 4th day of March, 1911, the complainant, U. S. Land & Oil Company, commenced another action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarene Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco

Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 29th day of July, 1911, setting up all the matters and things previously occurring or existing hereinbefore in this answer set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 17th day of October, 1911; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7787 of civil actions in said Superior Court.

XI. That the complainant is concluded and prevented, by the matters aforesaid, and particularly by the several decisions, judgments, orders and decrees of Court hereinabove mentioned and referred to, from raising all or any of the matters set forth in its said bill of complaint.

XII. In so far as may be necessary, in order to constitute the foregoing a good and valid defense to the said bill of complaint, these defendants incorporate herein the explicit denials, of the fraud and combination charged in the said bill, of the facts on which the said charge is founded, and of the evidentiary and other matter in the said bill of complaint anticipatory of the said defense, hereinafter in their second defense to the said bill of complaint contained.

As a second and further and alternative defense to the whole of the said bill of complaint these defendants say:

I. Admit that the Territory of Arizona on or about the 12th day of February, 1912, was admitted as and became a State and one of the United States of America, and ever since has been and now is a State and one of the United States of America.

II. As to the allegations, in paragraph "1st" of the said bill of complaint, as follows: that the complainant, U. S. Oil & Land Company, was formed, organized and existed under and by the laws of the Territory of Arizona; that it was and is provided and declared in and by the Constitution of the State of Arizona that all laws of the Territory of Arizona in force at the time of the adoption of said Constitution should remain in force as laws of the State of Arizona until they expired by their own limitations or were altered or repealed by law, and also that no rights or contracts existing at the time of admission of said State of Arizona into the Union should be affected by a change in the form of government from territorial to state; that by and under the provisions of said Constitution the complainant became and is a corporation existing under the Constitution and laws of the State of Arizona; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

III. Deny that the complainant is the owner in fee simple absolute, or any owner, of an undivided one-half of, or of any interest in, all or any portion of that certain tract of land, situate in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, particularly described in paragraph "1st" of the said bill of complaint.

IV. As to the allegations, in paragraphs "2d," "3d" and "4th" of the said bill of complaint, as follows: That the defendant San Francisco Savings Union is and during all the times mentioned in the said bill of complaint was a corporation created, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City and County of San Francisco, in said State of California; that the defendant Mercantile Trust Company of San Francisco is and during all the times in the said bill of complaint mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, in

said State of California; that on the 16th day of October, 1892, said Thomas Bell died intestate in the City and County of San Francisco, State of California, a resident of said city and county, leaving property therein, both real and personal; that the last will and testament of said Thomas Bell was by an order of the Superior Court of the City and County of San Francisco, State of California, duly made and given on the 7th day of November, 1892, admitted to probate; that on the 7th day of November, 1892, by an order of Court duly given and duly made, George Staacke and John W. C. Maxwell and one Henry Pichoir, the executors named in said will, were duly appointed the executors of the last will and testament of said Thomas Bell, deceased, and each of them on the 7th day of November, 1892, duly qualified and entered on the discharge of their duties as such executors; that thereafter, on the 30th day of December, 1892, said Henry Pichoir renounced his trust as such executor, and his resignation as such executor was on that day duly accepted by the Court and he was discharged from his duties as such executor; that thereafter and on the 13th day of September, 1898, the resignation of John W. C. Maxwell, as such executor, was by order of said Court in the matter of said estate accepted and said Maxwell ceased to be executor of said estate; that thereafter and on the 4th day of May, 1900, an order was duly made and entered in said Superior Court in the matter of said estate of Thomas Bell, deceased, revoking the letters testamentary that had been issued to said George Staacke, and said George Staacke ceased to be executor of the estate of said Thomas Bell, deceased; that thereafter and on the 2d day of February, 1902, said Teresa Bell filed a petition in the matter of the estate of Thomas Bell, deceased, praying that letters of administration of the estate of Thomas Bell, deceased, with the will annexed, be granted and issued to her, and that such proceedings were had and taken in the matter of said estate that an order was duly made therein by said Superior Court of the City and County of San Francisco on the 13th day of February, 1902, appoint-

ing said Teresa Bell administratrix of the estate of Thomas Bell, deceased, with the will annexed, and said order was duly filed and entered on the 19th day of February, 1902, and letters of administration of the estate of Thomas Bell, deceased, with the will annexed, were duly issued to said Teresa Bell; that said Teresa Bell on said 19th day of February, 1902, duly qualified as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and has ever since been the administratrix of the estate of Thomas Bell, deceased, with the will annexed; that the defendant Rauer's Law and Collection Company is and during all the times in the said bill of complaint mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

V. Admit and allege that the defendant Teresa Bell is the administratrix of the said estate of Thomas Bell, deceased, pending in the Superior Court of the State of California, in and for the City and County of San Francisco.

VI. Deny that the defendants in the said bill of complaint named and mentioned, claim and assert, or claim or assert, and each of them claims and asserts, or claims or asserts, an estate or interest in said tract, piece or parcel of land and in every part thereof.

Admit and allege that these defendants claim and assert and have a right, title, interest and estate in certain portions of the said tract, as follows, the same having been acquired, at the times and from the persons hereinafter mentioned, by purchase and for good and valuable consideration:

The defendant W. P. Hammon claims, and owns and has, ownership in fee simple to certain one hundred (100) acres of the said tract of land, with certain rights of way over the said tract of land, ever since the 10th day of November, 1911, by reason of having purchased the same from the defendant F. C. van Deinse, and having taken from the said F. C. van Deinse and Lulu van

Deinse, his wife, their grant, bargain and sale deed thereto, dated the said 10th day of November, 1911, and thereafter duly acknowledged and recorded on the 5th day of August, 1912, in the office of the County Recorder of the County of Santa Barbara, State of California, in Book 135 of Deeds, at page 389; the defendant F. C. van Deinse prior to such sale and deed by him to the defendant W. P. Hammon claimed, and owned and had, ownership in fee simple to the said one hundred (100) acres of land and the said rights of way, ever since the 22nd day of May, 1911, by reason of having purchased the same from the estate of the said Thomas Bell, deceased, and of having taken from Teresa Bell, as administratrix with the will annexed of the said estate, her deed thereto, dated the said 22nd day of May, 1911, and thereafter duly acknowledged, and recorded on the 18th day of September, 1911, in the office of the said County Recorder of the County of Santa Barbara, in Book 132 of Deeds at page 407, such sale by the said administratrix having been authorized and confirmed, and the execution and delivery of such deed directed, by the Superior Court of the State of California, in and for the City and County of San Francisco, by its order duly given and made, and filed and entered, in the matter of the said estate of Thomas Bell, deceased, on the said 22nd day of May, 1911, a certified copy of which order was recorded on the 4th day of August, 1911, in the office of the said County Recorder of the County of Santa Barbara, in Book 130 of Deeds at page 564; each the said two separate deeds and the said order describes particularly the said one hundred (100) acres of land and the said rights of way, and reference is hereby made to such deeds and order, and to the said records thereof, for such descriptions.

The defendant W. P. Hammon claims, and owns and has, ownership in fee simple to certain two thousand (2,000) other acres of the said tract of land, with a certain right of way over the said tract of land, ever since the 13th day of March, 1913, by reason of having purchased the same from Oilfields Syndicate of San Fran-

cisco, a corporation, and of having taken from the said corporation its deed of grant, bargain and sale thereto, dated and acknowledged the said 13th day of March, 1913, and thereafter on the 14th day of March, 1913, recorded in the office of the said County Recorder of the County of Santa Barbara; the said Oilfields Syndicate, prior to such sale and deed by it to the defendant W. P. Hammon, and its predecessors in interest, including the defendant W. P. Hammon, claimed and owned and had, ownership in fee simple to the said two thousand (2,000) acres of land and the said right of way by reason of several sales thereof evidenced by the conveyances thereof as follows: (1) Deed of grant, bargain and sale of Teresa Bell, Reginald Bell, William E. Bell, Robina Vellguth, Muriel M. Bell, Elizabeth M. Bell, A. S. Holman, and Peter J. Crosby to the defendant W. P. Hammon, dated and acknowledged the 1st day of May, 1911, and recorded on the 3rd day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 279; (2) deed of grant, bargain and sale of the defendant W. P. Hammon to S. L. Dahl, dated and acknowledged the 22nd day of May, 1912, and recorded on the 14th day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 335; (3) deed of grant, bargain and sale of the said A. L. Dahl and Lenna T. Dahl, his wife, dated and acknowledged the 12th day of June, 1912, and recorded on the 14th day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 336; and further by reason of that certain decree of partial distribution thereof duly given and made, and filed and entered, in the matter of the said estate of Thomas Bell, deceased, by the Superior Court of the State of California, in and for the City and County of San Francisco, on the 23rd day of July, 1912, a certified copy whereof was recorded on the 24th day of July, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 137 of Deeds, at page 39; each the said three several deeds and

the said decree describes particularly the said two thousand (2,000) acres of land and the said right of way, and reference is hereby made to such deeds and decree, and to the said records thereof, for such descriptions.

Admit and allege that the said claim, estate, interest and ownership of the defendant W. P. Hammon, and of his said predecessors in interest to the said two several portions, of one hundred (100) acres and two thousand (2,000) acres, respectively, of the said tract of land, are and were adverse to the complainant.

Admit and allege that those others of the defendants who are heirs and devisees of the said Thomas Bell, deceased, or assigns or successors in interest of such heirs and devisees, claim and assert and have a right, title, interest and estate in a portion of the said tract, to-wit, all rights, titles, interests and estates thereof and therein, and all parts thereof, not claimed and owned as aforesaid by these defendants as hereinabove stated, and also a right by way of mortgage over the said two thousand (2,000) acres thereof claimed and owned by the defendant W. P. Hammon, under a certain indenture of mortgage executed to the said Teresa Bell, as administratrix of the said estate of Thomas Bell, deceased, by the said A. L. Dahl, and dated the 31st day of May, 1912; admit and allege that each and all such claim, estate, interest, right and ownership is adverse to the complainant.

Deny that any of the other defendants claims and asserts, or claims or asserts, an estate or interest in the said tract, adverse to the complainant or otherwise; deny that the said claims of these defendants and of the said other defendants claiming by or through the said Thomas Bell, deceased, are, or that any of the said claims is, wrongful and unlawful, or wrongful or unlawful, and without or without any right whatever, and that, or that, the said defendants have not, and each or each of them has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract of land of which complainant claims to be the owner, or in or to any part or portion thereof; deny that the com-

plainant is the owner of an undivided one-half of the said tract, or of any part, portion or interest thereof or therein.

Allege that the respective interests of these defendants and of the said other defendants claiming by or through the said Thomas Bell, deceased, in the said tract of land and the several portions thereof, are as aforesaid and constitute and aggregate the entire right, title, ownership and estate of the said tract of land.

VII. As to the allegations in paragraph "6th" of the said bill of complaint, as follows: That the true name of said Robina Bell is Robina Vellguth; the true name of said R. McColgan is Reginald McColgan, and the true name of said Rauer Law and Collection Company is Rauer's Law and Collection Company; that the complainant has designated said defendants by both names, as it has no personal knowledge as to their true or full names; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

VIII. Admit that on or about the 29th day of June, 1901, a judgment and decree was made and recorded in and by the Superior Court of the State of California, in and for the County of Santa Barbara, and Hon. W. S. Day, Judge thereof, and was filed therein on said 29th day of June, 1901, in said Superior Court by C. A. Hunt, County Clerk of said County of Santa Barbara and Clerk of said Superior Court, in an action then pending in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," and in which action Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, at her request as such administratrix had been substituted by order of said Superior Court made in said action as defendant in place of defendants George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased; admit that the said judgment and decree was thereafter duly entered on or about the 9th day of July, 1901, by the Clerk of the said Su-

perior Court in the records and judgment book of the said Superior Court; admit that the said judgment and decree was entitled in said action and was substantially in the words and figures as set forth in paragraph "7th" of the said bill of complaint.

Deny that the said judgment and decree or judgment or decree was duly or otherwise than improperly made and recorded or made or recorded.

Admit that on or about the 8th day of July, 1901, the said George Staacke individually and said Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, served and filed a notice of appeal to the Supreme Court of the State of California from the portion or portions of the said decree described and mentioned in paragraph "8th" of the said bill of complaint; admits that thereafter such proceedings were duly had and taken on said appeal from said decree to the Supreme Court that said appeal from said judgment and decree was dismissed by the said Supreme Court of the State of California.

Deny that the said appeal was so dismissed for want of jurisdiction; deny that the said judgment and decree thereby or ever became and was or became or was affirmed; deny that the said judgment and decree ever or at any time since has been and remained or has been or remained and still is or still or at all is in full force or any force at all; deny that said judgment and decree was and is or was or is a final or any adjudication of the rights and interests or any right or any interest of the parties, or any of the parties, to said action in which it was rendered and entered.

Admit that the said Superior Court and the Judge thereof, in said action in which said judgment and decree was rendered, rendered and filed findings of fact and conclusions of law therein on the 6th day of March, 1901, and thereafter rendered and filed additional findings of fact and conclusions of law on the 7th day of June, 1901, on material issues raised by the pleadings in said action; that no motion for a new trial in said action of John S. Bell v. George Staacke, et al., and no

notice of intention to move for a new trial therein was made, given, served or filed on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901.

Deny that the findings of fact and conclusions of law, or any of such findings or conclusions, and the decision, or the decision, of the said Superior Court in said action on the 9th day of July, 1901, or at any time, became and ever or ever since or at any time have or has been final, conclusive and binding or final, conclusive or binding upon all or any of the parties to the said action, and their or their or any of their successors in interest, and upon or upon each and all or each or all or any of the heirs of said Thomas Bell, deceased, and the or the jurisdiction and power or power of said Superior Court to hear or grant any motion for a new trial in said action was then or at all terminated forever or at all and ceased or ceased to exist, and the said or the said Superior Court and any and all or any or all appellate courts of the State of California and the or the Supreme Court of the State of California lost and ceased to have or lost or ceased to have any jurisdiction whatsoever or at all to entertain, hear, pass upon and review or review any notice of intention to move for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court.

Admits that the facts as to the statutes of the State of California relating to motions for new trials, as set forth in paragraph "8th" of the said bill of complaint, are substantially correct; admit that said action in which said judgment and decree dated the 29th day of June, 1901, was rendered and filed was tried without a jury by the said Superior Court.

IX. As to the allegations, in paragraph "8th" of the said bill of complaint, as follows: That each and all of the defendants and attorneys for the defendants in said action in which said judgment and decree of June 29, 1901, was rendered and filed had notice and well

knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the time and as in the said paragraph and bill of complaint alleged and shown; that said additional findings and conclusions of law were made, rendered and filed by said Superior Court and by the Judge of said Superior Court upon and at the special instance and request of the attorneys of and for the defendants in said action in which said decree and judgment, dated June 29th, 1901, was rendered and filed; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

X. Admit that the facts as to Section 955 of the Code of Civil Procedure of the State of California, as set forth in paragraph "8th" of the said bill of complaint, are substantially correct; admit that the Supreme Court of California did not in or by its order, judgment and decree dismissing the appeal from said judgment and decree of said Superior Court, dated and filed in said Superior Court on the 29th day of June, 1901, dismiss said appeal without prejudice to another appeal or to any other appeal and did not either expressly or otherwise provide or declare that the dismissal of said appeal was made expressly or otherwise without prejudice to another appeal or to any other appeal; that said appeal taken by the defendants from said judgment and decree, dated June 29th, 1901, was dismissed by an order and judgment of the Supreme Court of the State of California, duly made and rendered in bank on the 16th day of September, 1902, and that said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside; that the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision of said Superior Court in said action entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors

of the will of Thomas Bell, deceased, and Louis Jones, defendants," upon which said judgment and decree of said Superior Court was made and filed on the 29th day of June, 1901, as aforesaid; that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are substantially in the words and figures as set forth in paragraph "8th" of the said bill of complaint.

XI. Deny that the said decision was the only decision of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action.

And in this behalf, and as more fully explaining and showing the course and eventual disposition made by the said Superior Court and by the Supreme Court of the State of California of the said action, and of the said judgment and decree therein upon which the complainant herein relies, these defendants hereby expressly refer to paragraphs I, II, III, IV and V of the first defense hereinbefore set forth in this answer, and pray that all the matters therein pleaded may be deemed hereby incorporatd herein as fully and wholly as though the same were herein set out and repeated at length.

XII. As to the allegations in paragraph "9th" of the said bill of complaint, as follows: That said Thomas Frederick Bell, Mary T. Holman, Robina Vellguth, Eustace Reginald Bell, Muriel Bell, and Teresa Bell were and are the only heirs at law of Thomas Bell, deceased; that said George Staacke made, signed, acknowledged and executed to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the said County of Santa Barbara, and as Clerk of said Superior Court, a good and sufficient deed and conveyance in due form of law, wherein and whereby he, the said George Staacke, granted, conveyed and transferred to the said James L. Crittenden in fee simple an undivided one-half of all of said tract, piece and parcel of land containing 10,067.2 acres, and to said Catherine M. Bell in fee simple an undivided one-half of, in and to said tract, piece or parcel

of land of 10,067.2 acres, describing in said deed and conveyance said tract, piece and parcel of land of 10,067.2 acres; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

XIII. Deny that such deed was made, signed, acknowledged and executed, and delivered, or made, signed, acknowledged, executed or delivered by George Staacke acting under and in accordance or in accordance with said judgment and decree and order therein made and contained or under or with any of the said judgment, decree or order; deny that the transfer, grant and conveyance made by and contained in said deed delivered to said C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk or at all for, and for the benefit of, or for, or for the benefit of, James L. Crittenden and Catherine M. Bell, or either of them, and became and was or became or was an absolute or any grant or other deed, transfer and conveyance or deed, transfer or conveyance of the title and fee, or any title or any fee of, in and to, or of, in or to said tract, piece or parcel, or tract, piece or parcel, of land of 10,067.2 acres, or any part thereof, to said James L. Crittenden and Catherine M. Bell, or either of them, and vested or vested in each or either of them an undivided or any one-half of said or any lands and of each and every or of each or every or of any part and portion or part or portion thereof; deny that the said grant, transfer and conveyance or grant, transfer or conveyance became final or of any effect on or about the 29th day of December, 1901, or at any time.

Allege that the said deed was made, signed, acknowledged, executed and delivered under and in accordance with the provisions of Section 944 of the Code of Civil Procedure of the State of California, and not otherwise; allege that the said deed at no time had any effect as a grant, conveyance or transfer, and at all times prior to the 30th day of November, 1903, was in the hands of the said clerk, under the said Section 944, to abide the

judgment of the Supreme Court of the State of California; that on the said 30th day of November, 1903, and again on the 28th day of December, 1903, the said Supreme Court by its two several judgments duly given and made on the said respective days, annulled and cancelled the said deed; that since the said 28th day of December, 1903, the said deed has had no force or validity for any purpose whatsoever.

And in this behalf, and as more fully explaining and showing for what reason and under what circumstances and with effect the said deed, upon which the complainant herein relies, was made, signed, acknowledged, executed and delivered, and how and when it was annulled and cancelled by the said Supreme Court, these defendants hereby expressly refer to paragraph VI of the first defense hereinbefore set forth in this answer, and pray that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

XIV. As to the allegations in paragraph "9th" of the said bill of complaint, that the said U. S. Oil & Land Company was duly created, and organized under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said Territory of Arizona and in said City and County of San Francisco, and was such corporation on the 18th day of September, 1902, and for a long time prior thereto, and has ever since been a corporation, and is now a corporation existing by and under the Constitution and laws of the State of Arizona; that on or about the 5th day of April, 1905, said George Staacke died testate in the City and County of San Francisco, State of California, a resident of said City and County, leaving property therein; that thereafter the last will and testament of said George Staacke was filed for probate in the Superior Court of the City and County of San Francisco, State of California; that thereafter in the month of April, 1907, a petition in writing was filed by George Henry Howard for the probate of the last will and testament of said George Staacke, deceased, in the said

Superior Court of the City and County of San Francisco, and on the 19th day of April, 1907, an order and decree was duly given and made in said last mentioned Superior Court admitting the last will and testament of said George Staacke to probate, and appointing said George Henry Howard executor of the estate and of the last will and testament of said George Staacke, deceased; that on the said 19th day of April, 1907, letters testamentary of and upon the estate and of the last will and testament of said George Staacke, deceased, were duly issued out of and by said Superior Court of the City and County of San Francisco to said George Henry Howard, and a duplicate filed in the office of the Clerk of said Court, and that said George Henry Howard thereupon duly qualified and entered upon the discharge of his duties as such executor and has ever since been and now is the executor of the estate and of the last will and testament of said George Staacke, deceased; that on the 18th day of September, 1902, said James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the U. S. Oil & Land Company, plaintiffs herein, by deed dated September 18, 1902, signed and acknowledged by them, an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; and that said deed was thereafter and on the 26th day of September, 1902, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 84 of Deeds, at page 253 et sequiter; that on the 5th day of July, 1910, said U. S. Oil & Land Company for a valuable consideration sold, granted, transferred and conveyed in fee simple an undivided one-half of said 10,067.2 acres and tract of land to the San Luis Land and Investment Company, a corporation, by deed dated the 5th day of July, 1910, duly signed and acknowledged by it and its President and Secretary and that said deed was thereafter and on the 5th day of July, 1910, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 128 of Deeds, at page 101 et sequiter: these de-

endants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that such deeds were, or either of them was, good and sufficient or good or sufficient, or operated as a sale, grant, transfer or conveyance, in fee simple or otherwise or at all, of any interest in the said tract or any portion thereof.

XV. As to the allegations in paragraph "10" of the said bill of complaint, as follows: that on the 23rd day of August, 1898, an action was commenced in the Superior Court of the State of California, in and for the County of Santa Barbara, by the filing of a complaint and that said action was entitled "Kate M. Bell, James L. Crittenden and Sydney M. Van Wyck, Jr., Plaintiffs, v. San Francisco Savings Union, Thaddeus B. Kent, George Staacke, Henry C. Campbell, Edward B. Pond, Teresa Bell, Thomas Frederick Bell, Maria Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell as guardian of the persons and estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and John W. C. Maxwell and George Staacke as executors of the estate and of the last will and testament of Thomas Bell, deceased, John Doe, Richard Roe, Jane Doe and Mary Doe, defendants"; that said action was numbered in said Superior Court of Santa Barbara County as No. 4424, and that thereafter by an order duly made and filed on the 6th day of October, 1903, and by summons issued on defendant's cross-complaint said U. S. Oil & Land Company was brought in as a defendant to the cross-complaint in said action; that on the 17th day of December, 1902, an order in said action No. 4424 was duly made and filed in said Superior Court wherein and whereby said Mercantile Trust Company of San Francisco was made a party defendant and it and said San Francisco Savings Union, Henry C. Campbell and Edward B. Pond were given permission to serve and file a supplemental complaint and also a cross-complaint; that on or about the 12th day of October, 1903, a cross-com-

plaint on the part of and by said San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco against said Kate M. Bell, James L. Crittenden, Teresa Bell as the administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the U. S. Oil & Land Company, as defendants to said cross-complaint, was made and filed in said action; that answers to said amended cross-complaint were duly made, served and filed by each and all of said defendants to said cross-complaint in said action No. 4424; that answers to the complaint as amended in said action No. 4424 were duly made, served and filed by said San Francisco Savings Union, Edward B. Pond, Henry C. Campbell, Mercantile Trust Company of San Francisco, George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased; that thereafter a trial of the issues raised in and by the pleadings in said action No. 4424 was had; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that a decision consisting of findings of fact and conclusions of law was made, rendered and filed in said Superior Court, in an action then pending therein, numbered 4424, by the Judge thereof on or about the 14th day of March, 1905, and on or about the same day a judgment and decree was duly made and filed in said action No. 4424, in said Superior Court by the Judge thereof; that said decision consisting of findings of fact and conclusions of law in said action No. 4424 found and filed as aforesaid is substantially in the words and figures as set forth in paragraph "10th" of the said bill of complaint; admit that the judgment and decree in the said action, made and filed as aforesaid on or about the 14th day of March, 1905, was thereafter duly entered in said Superior Court, and is substantially in the words and figures as set forth in paragraph "10th" of the said bill of complaint; admit that on or about the 8th day of September, 1905, the said U. S. Oil & Land Company

and James L. Crittenden, by notice of appeal and by giving the undertaking required by law, duly appealed from the judgment in said action No. 4424 to the Supreme Court of the State of California; that thereafter and on or about the 10th day of April, 1906, said U. S. Oil & Land Company and said James L. Crittenden by written notice of appeal and by giving the undertaking required by law duly took and perfected an appeal to the said Supreme Court from an order made in said action denying their motion for a new trial; that the said Teresa Bell, as such administratrix also took and perfected an appeal from a portion of said judgment in said action to said Supreme Court, to-wit, from all thereof save that portion of the said judgment which adjudged that the plaintiffs therein, Kate M. Bell and James L. Crittenden, and the defendant to the cross-complaint therein, U. S. Oil & Land Company, jointly and severally take nothing by the said action.

Admit and allege that such proceedings were thereafter duly had on said appeals that said judgment and order denying a new trial in said action No. 4424 were duly affirmed on the 14th day of February, 1908, and that said decree so affirmed has ever since been and now is in full force.

Deny that the said Teresa Bell, as such administratrix, appealed from that portion of the said judgment which adjudged that the plaintiffs therein, Kate M. Bell and James L. Crittenden, and the defendant to the cross-complaint therein, U. S. Oil & Land Company jointly and severally take nothing by the said action.

And in this behalf, and as more fully explaining and showing the nature of the said action and of the said appeals, and the relation of the said action to the other actions and proceedings in the said bill of complaint and in this answer mentioned or pleaded, these defendants allege that the opinion and decision of the said Supreme Court, supporting, announcing and directing the judgment and decree affirming the said judgment and order made in the said action and so appealed from, appears, under the caption "Bell v. San Francisco Savings

Union," in Volume 153 of the official reports of the said Supreme Court, at pages 64 to 77, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this answer.

XVI. Admit that the value of the said tract, piece and parcel of land, consisting of 10,067.2 acres, has greatly increased, since the year 1893, by reason of the discovery of oil therein and in the adjoining lands.

Deny that the said 10,067.2 acres of land is now of the value of at least three million dollars (\$3,000,000).

XVII. Admit that the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, has paid to the Mercantile Trust Company of San Francisco, and to said San Francisco Savings Union \$179,411.40, the full amount due said San Francisco Savings Union on its claim against said estate of Thomas Bell, deceased, as adjudged and decreed in and by said judgment in the said action No. 4424; that on the 16th day of June, 1908, the said Teresa Bell, as such administratrix, by her attorney, T. Z. Blake-man, Esq., and said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco by their attorneys, Canfield & Starbuck, Esq., made and filed in said Superior Court in said action No. 4424 a written stipulation stating and declaring that the total amount due to said San Francisco Savings Union was \$179,411.40 and that said amount had been paid to the said San Francisco Savings Union by the said Teresa Bell as such administratrix, without any sale of the lands in said judgment described, and that it was therefore stipulated that the said judgment in said action No. 4424 be and was satisfied, and that the Clerk of the said Superior Court was directed to enter satisfaction of said judgment.

Deny that the said payment was voluntarily made; deny that the said payment was made with the intent, object and design, or intent, object or design, of depriving the complainant of its or any right and interest.

or right or interest, of, in and to, or of, in or to said undivided one-half of 10,067.2 acres of land, or any part thereof, and of, or of, its or any right, interest and equity, or right, interest or equity, in and to, or in or to, such or any portion of the proceeds or any proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said Action No. 4424; deny that the complainant had any right, interest or equity in all or any portion of the said tract or the said proceeds of sale; deny that with such intent, purpose, object and design, or such intent, purpose, object or design, and to obtain, or to obtain, an unfair and unconscionable, or unfair or unconscionable or any advantage, over the said complainant the said Teresa Bell upon making said payment, or otherwise or at all, obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union, or from either of them, an instrument in writing purporting and pretending, or purporting or pretending, to grant, bargain, sell and convey, or to grant, bargain, sell or convey, said 10,067.2 acres of land with the exception of those pieces and parcels excepted therefrom by and in said judgment to said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, or any portion of the said tract and acres of land.

Allege that at the time of such payment by the said Teresa Bell, as such administratrix, the heirs and devisees of the said Thomas Bell, deceased, and the estate of the said deceased, were the owners of the said tract of 10,067.2 acrs, and that the said payment was made for the sole purpose and with the sole intent of discharging the said tract of land from the burden and lien of the said judgment in the said action No. 4424, and that the said payment was of the sum due upon said judgment, to-wit, the sum of \$179,411.40, and when made did effect such discharge; that such payment was made

under the authorization and order of the Court having jurisdiction over the said estate, to-wit, the Superior Court of the State of California, in and for the City and County of San Francisco, as pleaded and set forth in paragraph VII of the first defense hereinbefore set forth in this answer, reference to which paragraph is hereby expressly made, with the prayer that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

Admit and allege that upon such payment the said San Francisco Savings Union made, executed and delivered to said Teresa Bell, as such administratrix, a deed of reconveyance of all the land embraced in the mortgage foreclosed in the said tract of 10,067.2 acres.

Deny that the making and execution or the making or execution of the said conveyance or instrument was contrary to and in violation, or in violation, of said judgment in said action No. 4424, or of the or any provisions of said judgment, or of the trust, if any, therein adjudged and declared or adjudged or declared, and was or was wrongful, fraudulent and unlawful, or wrongful, fraudulent or unlawful, and in violation, or in violation, of the rights and interests or any right or any interest of the complainant herein under said judgment and decree in said action No. 4424 and under or under said judgment dated June 29th, 1901, or otherwise, or at all; deny that complainant had any right or interest under said judgment and decree in said action No. 4424 or under said alleged judgment dated June 29th, 1901.

XVIII. As to the allegations in paragraph "11th" of the said bill of complaint, as follows: That said deed and conveyance so obtained as aforesaid by said Teresa Bell as such administratrix from said Mercantile Trust Company of San Francisco and said San Francisco Savings Union was dated May 26th, 1908, and was recorded at the request of said Teresa Bell as such administratrix on the 15th day of June, 1908, by the County Recorder of Santa Barbara County in Book of Deeds

No. 118 on the pages 585 to 589 thereof; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that one of the considerations, and allege that the only consideration, for the making and execution of said deed and conveyance to said Teresa Bell as such administratrix, as stated in said deed, was the payment of the sum due and payable to said San Francisco Savings Union under and by virtue of said judgment in said action No. 4424.

Deny that such payment and conveyance was a pretended or any sale or transfer, or anything but a reconveyance as hereinbefore stated; deny that the same was made under and in pursuance or under or in pursuance of a combination and conspiracy, or a combination or conspiracy, entered into by the said Mercantile Trust Company of San Francisco, San Francisco Savings Union and Teresa Bell, or any of them, or any combination or conspiracy whatsoever, with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent or any intent, object, purpose and design, or intent, object, purpose or design, to defraud the said complainant out of its right, title and interest, or any right, title or interest, in said 10,067.2 acres of land, or any part thereof, and out, or out, of its right, title and interest, or any right, title or interest, in and to or in or to the or any proceeds of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or otherwise or at all, and also, or to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, or any provisions of said judgment and decree, and that, or that, said payment and reconveyance was made secretly or at all in pursuance and execution, or in pursuance or execution, of any combination and conspiracy, or combination or conspiracy, and with or with the fraudulent or any intents, objects, purposes and

designs specified in paragraph "11th" of the said bill of complaint.

As to the allegations in paragraph "12th" of the said bill of complaint, as follows: That the said payment and reconveyance was made without any notice whatever thereof, or of any proposed sale being given or published in any newspaper and without any notice whatever being given to said complainant; that the said Teresa Bell, Mercantile Trust Company and San Francisco Savings Union knew and each of them knew at the time of the said pretended sale and transfer, and of the payment of said sum of \$179,411.40 that said tract of land of 10,067.2 acres was worth and of the value of at least \$500,000 and that the development of oil near or adjoining said lands made them prospectively worth at least one million of dollars or more; that said 10,067.2 acres of land has never been advertised for sale by said Mercantile Trust Company of San Francisco as required in and by said decree in said action No. 4424 or otherwise or at all; that said pretended deed and conveyance and the pretended sale and transfer of said tract of 10,067.2 acres of land to said Teresa Bell as administratrix, etc., by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has never been reported or submitted to or approved or confirmed by said Superior Court of Santa Barbara County; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that said payment and reconveyance was a fraud upon the complainant and contrary or contrary to and in violation or in violation of said decree in said action No. 4424; deny that the defendants in this action, or these defendants and those defendants claiming under or through Thomas Bell, deceased, wrongfully and unlawfully, or wrongfully or unlawfully, claim and assert, or claim or assert, that the said reconveyance transferred and vested, or transferred or vested in said Teresa Bell, as such administratrix, the title of, in and to, or of, in or to, said tract of land consisting of 10,067.2

acres, including, or excluding, any and all, or any or all, rights, title and interest, or any rights, title or interest, of said complainant.

Admit and allege that the defendants claim, and properly and lawfully so, that the said reconveyance discharged the lien of the said judgment in the said action No. 4424; allege that prior to and until the time of such reconveyance the said heirs and devisees of the said Thomas Bell, deceased, and his said estate, were the owners of all of the said tract of land, subject only to the burden and charge of the said lien, having acquired such ownership as described in paragraph V of the first defense hereinabove in this answer set forth, and that the defendants claim that such reconveyance discharged such lien and left their ownership one free and clear of any lien or charge whatsoever.

Deny that the claim made by the defendants is without merit, wrongful and unlawful, or without merit, wrongful or unlawful, or contrary to and in conflict or in conflict with said judgment in the said action No. 4424, and a fraud or a fraud upon the complainant, and was and is, or was or is, made with the wrongful, fraudulent and unlawful, or wrongful, fraudulent or unlawful, intents, purposes and designs, or intents, purposes or designs, mentioned in the said paragraph "11th" of the said bill of complaint, and of defrauding, or of defrauding, the said complainant and its successors and grantees, or any of them, out of its or any interest in and title to, or interest in or title to, an undivided one-half, or any part, of the said 10,067.2 acres of land; deny that said Mercantile Trust Company of San Francisco has wholly or at all failed and neglected, or failed or neglected, to perform its duties, if any, as trustee under said decree in said action No. 4424, and has, or has, as in paragraph "11th" of the said bill of complaint alleged, attempted to transfer and dispose of the said, if any, or any trust property, the said tract of 10,067.2 acres of land, or any part thereof, contrary to and in violation of, or in violation of the trust, if any, declared or set forth in said decree in said action No. 4424, and

with or with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent, or any, intents, objects, purposes and designs, or intents, objects, purposes or designs, in the said paragraph "11th" of the said bill of complaint alleged.

Admit that the said George Staacke had no personal interest or right or title in or to any of the proceeds of the sale of said tract of 10,067.2 acres of land adjudged to be made under and in pursuance of said decree in said action No. 4424, and his heirs, assigns and executor have no other different or greater right, title or interest in or to any such proceeds than said George Staacke had under said decree.

Deny that said George Staacke had no other right, title or interest whatever in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of trustee for the benefit of the U. S. Oil & Land Company, its successors and assigns.

Allege that said George Staacke held title to said lands, and to all proceeds of any sale thereof under said decree, as trustee, to make the payments required under the terms of that certain judgment and decree dated the 17th day of October, 1904, pleaded and set forth in paragraph II of the first defense hereinabove in this answer made.

XIX. As to the allegations in paragraph "11th" of the said bill of complaint, as follows: That on or about the 3d day of March, 1911, the San Luis Land and Improvement Company, a corporation, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the complainant by deed and conveyance an undivided one-half of said 10,067.2 acres and tract of land described in the said bill of complaint, and said deed was thereafter and on the fifth day of March, 1911, duly filed for record and recorded in the office of the County Recorder in said County of Santa Barbara in Book of Deeds No. 131 on pages 109 to 110 thereof; that said John S. Bell on the 22nd day of December, 1896, for a valuable consideration granted, bargained, sold and conveyed to Catherine M. Bell, his wife,

one of the defendants above named, said tract or piece of land of 10,067.2 acres, in fee simple absolute, and made, executed and delivered to her a grant, bargain and sale deed granting, transferring and conveying for a valuable consideration to said Catherine M. Bell, known also as ^Kate M. Bell, said 10,067.2 acres and tract of land; that said deed of John S. Bell to Catherine M. Bell was dated the 22nd day of December, 1896, and was recorded in the office of the County Recorder of Santa Barbara County on the 18th day of June, 1897, in Book 59 of Deeds at page 579; that said John S. Bell and Catherine M. Bell did on the 12th day of June, 1897, for a valuable consideration grant, bargain, sell and convey in fee simple absolute to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, and did make, execute, acknowledge and deliver to said James L. Crittenden and Sidney M. Van Wyck, Jr., a grant, bargain and sale deed and conveyance wherein and whereby they, said John S. Bell and Catherine M. Bell, did grant, bargain and sell and convey for a valuable consideration to said James L. Crittenden and Sidney M. Van Wyck, Jr., and to their heirs and assigns, an undivided one-half of said tract or piece of land of 10,067.2 acres; that said deed from said John S. Bell and Kate M. Bell to said James L. Crittenden and Sidney M. Van Wyck, Jr., was dated the 12th day of June, 1897, and was duly recorded in the office of the County Recorder of Santa Barbara County, State of California, on the 18th day of June, 1897 in Book 59 of Deeds at page 582; that on the 7th day of March, 1899, for a valuable consideration by grant, bargain and sale deed and conveyance said Sidney M. Van Wyck, Jr., granted, bargained, sold and conveyed in fee simple to said James L. Crittenden and to his heirs and assigns forever all his right, title and interest of, in and to said tract or piece of land of 10,067.2 acres, and that said deed was dated March 7th, 1899, and recorded in said Recorder's Office in Santa Barbara County on the 26th day of November, 1900, in Book 75 of Deeds at page

223; that the said deeds and conveyances so executed and recorded as aforesaid, by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company, and San Luis Land and Improvement Company, each granted and conveyed an undivided one-half of all of that certain tract, piece and parcel of land consisting of 10,067.2 acres described in paragraph numbered 1st of the said bill of complaint, with the exception of the lots, pieces and parcels mentioned in said paragraph 1st as excepted from the 10,067.2 acres tract described therein; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that any of the said deeds or conveyances was good and sufficient, or good or sufficient, or of any effect whatsoever.

XX. As to the allegations in paragraph "12" of the said bill of complaint, as follows: That the Associated Oil Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Associated Transportation Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in said State of California; that the Union Oil Company of California, defendant herein, is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in said State of California; that each and every one of the defendants mentioned in the title of the said bill of complaint is a citizen and resident of the State of California; that said U. S. Oil & Land Company is a citizen of the State of Arizona; that Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, known also as Elizabeth M. Bell; W. E. Bell, known also as Eustace Bell; Reginald Bell, T. M. Bell, Muriel Bell, also known as Muriel Margaret Bell; Robina Bell, Katherine M. Bell; known also as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur

S. Holman, husband of Marie T. Holman; Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auze-rais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, J. Doherty, Henry N. Evans, J. S. Evans, Joseph Smith, Joseph Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, M. Dominguez, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Union Oil Company of California, The Associated Oil Company, The Associated Transportation Company, Rauer's Law and Collection Company, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, defendants, are citizens and residents of the State of California, and that each of said defendants is a citizen and resident of said State of California; that the name of said San Francisco Savings Union has been changed to Savings Union Bank and Trust Company by and under a judgment of the Superior Court of the State of California, in and for the City and County of San Francisco duly made, rendered and entered in a proceeding duly commenced and prosecuted by said San Francisco Savings Union and the directors thereof, and that a certified copy of said judgment changing the name of said San Francisco Savings Union as aforesaid has been duly filed with the Secretary of State of the State of California; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that these defendants are citizens and residents of the said State of California, and that each of them is a citizen and resident of the said State of California; allege that these defendants are residents of the Northern District of the said State of California.

XXI. As to the allegations in paragraph "14th" of

the said bill of complaint, as follows: 'That said George Henry Howard has made, executed and delivered to O. H. Harshbarger a pretended deed and conveyance purporting to transfer and convey all the right, title and interest of said George Henry Howard in and to said tract, piece and parcel of land of 10,067.2 acres; that said George Henry Howard and O. H. Harshbarger had notice and knowledge at the time of and before said pretended deed and conveyance was made by said Howard to said Harshbarger of the title of complainant to an undivided one-half of said 10,067.2 acres and tract of land and of each and all of the facts and matters set forth in the said paragraph of the said bill of complaint; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny the said title of complainant to any portion of or interest in said tract of land; deny the said facts and matters, as follows: Deny that the said tract of land had been and was or had been or was deeded and conveyed, or deeded or conveyed, by Dwight W. Grover and Samuel Rosener on or about the 7th day of March, 1889, or at all, in trust for the benefit of John S. Bell; deny that the said John S. Bell was then the owner of the said tract; deny that said Grover and Rosener had on and prior to March 7th, 1889, or at all, agreed to reconvey said tract of land to said John S. Bell, and that or that said George Staacke paid no consideration whatever for said tract, piece or parcel of land of 10,067.2 acres or for any part or portion thereof or for said or any deed and conveyance executed to him by said Grover and Rosener, and that, or that, said George Staacke received and accepted or received or accepted said or any deed and conveyance, and held or held the title to said 10,067.2 acres of land as such trustee, and not otherwise, or at all, from the time he received the same to the time of his death, or at all, and that or that the decrees in the said bill of complaint mentioned had been made and entered by said Superior Court of Santa Barbara County; deny that said or any deed and con-

veyance made by said Howard to said Harshbarger was made with the fraudulent and unlawful, or fraudulent or unlawful or any, intent, object, purpose and design, or intent, object, purpose or design, to defeat said alleged or any trust upon which said land had been conveyed by said Grover and Rosener to said George Staacke, as alleged in the said bill of complaint, and to deprive or to deprive the complainant and the successors in interest of John S. Bell, or any of them, of the or any benefits of the said alleged or any trust and of or of their or any rights thereunder, or otherwise or at all.

And as further supporting their denial, and explaining the alleged claims of the plaintiff, these defendants hereby refer to that final decree, dated the 12th day of October, 1904, pleaded and set forth in paragraph 11 of the first defense hereinabove in this answer made.

XXII. Admits that the matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars and that the real property involved in this suit exceeds in value the sum of one million dollars; that the matter in controversy in this suit is between citizens of different states, that is, between the complainant, a citizen of the State of Arizona, and these defendants, who are citizens of the State of California; that each and all of the defendants had notice of said judgments and decrees, and of said findings in the said bill of complaint mentioned and set forth, and had such notice before these defendants or any of them entered upon said tract of land or paid any money or consideration for any right or interest therein or thereto; that these defendants, W. P. Hammon and F. C. van Deinse, did on or about the 1st day of June, 1911, enter upon a portion of said lands and bore or cause to be bored a well for the purpose of extracting oil from said land with the intent, object, purpose and design to appropriate to their own use or to the use of one of them any and all oil obtained or extracted from said lands; admit that said defendants W. P. Hammon and F. C. van Deinse threaten and are about to bore or cause to be bored other wells with the intent, object,

purpose and design of extracting oil from said land and appropriating all oils extracted therefrom to the use of one or both of them and will, unless restrained and enjoined by this Honorable Court, extract large quantities of oil from said lands, sell the same, and appropriate the proceeds thereof to the use of one or both of said defendants.

Denies that these defendants, or either of them, ever had any notice of the, or any, right, title and interest or right, title or interest of the complainant in and to or in or to an undivided one-half or any portion of the said tract of land; deny that the entry of these defendants, or their intent, object, purpose of design in making such entry, or in boring or causing to be bored wells, upon the said portions of the said tract of land, or that of either of them, are or is or were or was wrongful or unlawful; deny that the boring of wells or appropriation of oil by these defendants upon and from the said portion of the said tract of land, or either of such acts will greatly or at all depreciate the value of the said land or greatly or irreparably or at all injure or damage or cause loss to the said complainant or its alleged rights, interest and title, or any of them, in and to or in or to the said land.

Allege that the entry, boring of wells, and appropriation of oil by these defendants, upon and from the said portions of the said tract of land was and is a lawful and proper exercise of the right of ownership in and to the said portion of the said tract of land by these defendants.

XXIII. As to the allegations in paragraph "15th" of the said bill of complaint, as follows: That said Teresa Bell as such administratrix and claiming and asserting to have acquired the title in fee to said 10,067.2 acres of land by and under said deed dated May 26th, 1908, so as aforesaid made and executed by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has collected large sums of money as rents from the tenants on said tract of land aggregating about \$10,000, to which rents the complain-

ant claims to be entitled as the owner in fee of an undivided one-half of said tract of 10,067.2 acres of land; that the said Teresa Bell as such administratrix threatens to collect and appropriate to her own use as such administratrix all the rents, income and profits of said tract of 10,067.2 acres of land and will carry out said threats and collect and appropriate all of said rents, income and profits to her own use as such administratrix unless restrained and enjoined by this Honorable Court and by an injunction issuing in this suit out of the Court commanding her as such administratrix to desist and refrain from collecting the same or the one-half thereof which the complainant claims to be entitled; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that said Teresa Bell as such administratrix claims wrongfully or unlawfully to have acquired title to the said tract of land; deny that the appropriation by such administratrix of the profits of all such tract of land will cause great and irreparable, or great or irreparable, or any, loss, injury or damage to the complainant; deny that on or about the 20th day of May, 1908, or at all, the said Teresa Bell, Mercantile Trust Company of San Francisco, and San Francisco Savings Union, or any of them, combined and conspired, or combined or conspired, together or at all, to evade and defeat, or evade or defeat, the said decree in said action No. 4424, or otherwise or at all, and to deprive or to deprive said complainant of its or any right, title and interest, or right, title or interest, in and to or in or to an undivided one-half, or any portion, of said tract of land, and of or of its or any interest in and right to, or right to, the or any proceeds and every or any part of the proceeds that might be obtained by and from a sale of said tract of land, and did or did, in pursuance of said or any combination and conspiracy, or combination or conspiracy, or at all, and with or with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent, or any, intent, object, purpose and design,

or intent, object, purpose or design, of evading and defeating or evading or defeating said decree in said action No. 4424, and of, or of depriving said complainant of its or any right, title and interest, or right, title or interest, in and to or in or to an undivided one-half or any portion of said tract of land and of, or of, any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, or otherwise or at all, have and cause, or have or cause, the deed dated May 26th, 1908, mentioned in paragraph "11th" of the said bill of complaint, to be made and executed or made or executed; deny that said deed was made, executed and delivered, or made, executed or delivered under and in pursuance of, or under or in pursuance of, said or any wrongful and unlawful, or wrongful or unlawful, or any, combination and conspiracy, or combination or conspiracy.

XXIV. As to the allegations in paragraph "15th" of the said bill of complaint, as follows: That said C. A. Hunt, one of the defendants, is County Clerk of said County of Santa Barbara and Clerk of said Superior Court of said County of Santa Barbara, and has in his possession and under his control the deed and conveyance made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden and delivered to said Hunt, as alleged in the said bill of complaint, on the 8th day of July, 1901; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

XXV. Deny that any of the acts done or threatened to be done was or is a wrong to the said complainant; allege that the complainant has no right, title, interest, estate or equity, or any claim whatsoever, in the said tract of land or any part thereof or any proceeds thereof.

And in this behalf, and as more fully showing and explaining the invalid character and nature of the claims made by the said complainant, and the knowledge of the complainant at all times of such invalidity, and the reliance placed by these defendants, at the time of their

said purchases of interests in certain portions of the said tract of land, upon such invalidity, these defendants hereby expressly refer to paragraphs VIII, IX, X and XI of the first defense therein pleaded and set forth, with the prayer that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

Allege that these defendants at all times were and are purchasers in good faith, and for good and valuable considerations, of the said interests, without knowledge of any matters relating to the said tract of land save those disclosed on the face of the records of title thereto and of the said divers court proceedings; allege that by this action the complainant is endeavoring to raise anew questions of fact and of law repeatedly and finally decided against it by the Supreme Court of the State of California.

Deny that the complainant has no plain, speedy or adequate remedy at law.

Wherefore, these defendants pray that the complainant's bill of complaint may be dismissed and that these defendants have and recover their costs and disbursements herein.

Chauncey S. Goodrich,
Solicitor for the Said Defendants.

Charles W. Slack, of Counsel.

State of California, City and County of San Francisco, ss.

W. P. Hammon, being first duly sworn, deposes and says: That he is one of the defendants in the within entitled cause, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters, that he believes it to be true.

W. P. Hammon.

Subscribed and sworn to before me this 14th day of March, A. D. 1913.

Charles Edelman,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

Receipt of a copy of the within Answer admitted this 14th day of March, 1913.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

(Endorsed. Filed March 17, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Wednesday, the nineteenth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on this day to be heard separately on the special defense, viz., previous judgments, etc., as set up by the bill and answer; T. Z. Blakeman, Esq.; Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants, and no counsel appearing on behalf of complaint; it is ordered that said cause be and the same hereby is continued until Thursday, the 20th day of March, 1913, at 10:30 o'clock a. m., for said hearing.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Thursday, the twentieth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on this day to be heard separately

on the special defense, viz., previous judgments, etc., as set up by the bill and answer; James L. Crittenden, Esq., and F. J. Carrier, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants; and said special defense having been argued on behalf of complainant by James L. Crittenden, Esq., of counsel for complainant; it is thereupon ordered that said cause be and the same hereby is continued until the hour of 2 o'clock p. m., of this day, for further hearing.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Thursday, the twentieth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on at this time to be further heard on the special defense, viz., previous judgments, etc., as set up by the bill and answer; James L. Crittenden, Esq., and F. J. Carrier, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants; and said special defense having been further argued on behalf of complainant by James L. Crittenden, Esq., of counsel for complainant, and on behalf of defendants by T. Z. Blakeman, Esq., of counsel for defendants; and Court, at the hour of 3:30 o'clock p. m. having taken a recess for 5 minutes; and now at the hour of 3:35 p. m., Court having reconvened; and counsel being present as before; and said special defense having been further argued on behalf of defendants by Chauncey S. Goodrich, Esq., of counsel for defendants, and on behalf of complainant in reply by James L. Crittenden, Esq., of counsel for complainant; it is ordered that said cause be and the same hereby is submitted to

the Court for its consideration and decision on said special defense upon the oral argument thereof and on briefs to be served and filed as follows, to-wit: On behalf of complainant within fifteen (15) days, on behalf of defendants within fifteen (15) days thereafter, and on behalf of complainant in reply within ten (10) days thereafter.

In the District Court of the United States for the Southern District of California, Southern Division. No. 140. Civil.

U. S. Oil & Land Company, a Corporation, Complainant, vs. Teresa Bell, as Administratrix of the Estate of Thomas Bell, Deceased, with the Will Annexed, et al., Defendants.

James L. Crittenden and Richards & Carrier, solicitors for complainant.

T. Z. Blakeman and Chauncey S. Goodrich, solicitors for defendants.

Rudkin, District Judge.

This is a suit in equity to quiet title to an undivided half interest in a tract of land embracing approximately 10,000 acres situate in Santa Barbara County, California. The defendants have pleaded in bar certain judgments of the Courts of the State of California and a judicial sale thereunder, and it has been agreed between the parties that such defenses may be separately heard and disposed of before the trial of the principal case, under Equity Rule 29.

Some years prior to the 29th day of June, 1901, John S. Bell as plaintiff, brought an action in the Superior Court of Santa Barbara County, California, against George Staacke and John W. C. Maxwell as executors of the will of Thomas Bell, deceased, and also against one Louis Jones, to have a trust declared in his favor against the defendant Staacke in 10,000 acres of land in Santa Barbara County, the title to which stood of record in the name of the latter, and to compel a conveyance thereof to him by Staacke. Teresa Bell, administratrix of the estate of Thomas Bell, de-

ceased, was afterwards substituted for the defendants Staacke and Maxwell as executors. The defendant Staacke individually and Teresa Bell, as administratrix, by answer and cross-complaint set up that the land was held by Staacke subject to a trust in favor of the estate of Thomas Bell, deceased, to secure certain advances made by Thomas Bell in his lifetime at the instance and for the benefit of the plaintiff, and prayed that this latter trust be declared superior to the trust asserted by the plaintiff. The trial court on the above date decreed that the land was held by Staacke in trust solely for the plaintiff and was not subject to any trust in favor of the estate of Thomas Bell, deceased, and directed a conveyance by the defendant Staacke to the plaintiff. The Court, however, under the cross-complaint, awarded the administratrix of the estate of Thomas Bell, deceased, a personal judgment against the plaintiff for the sum of approximately \$52,000, the balance due from plaintiff for money advanced and loaned by the deceased prior to his death on October 16, 1892. The defendants appealed from that portion of the decree adjudging that the land was not subject to a trust in favor of the estate of Thomas Bell, deceased, and also from an order denying their motion for a new trial. Their appeal from the judgment was dismissed by the Supreme Court of the state (137 Cal., 307) and the order denying the motion for a new trial was affirmed by a Department decision (70 Pac., 472). A rehearing was later granted by the Court en banc as to the Department decision, and the Court thereafter, on rehearing, set aside the decision of the Department, reversed the order denying the motion for a new trial and awarded a new trial in the Court below, except as to certain issues not material here. During the pendency of the action in the Superior Court and before final judgment the plaintiff John S. Bell conveyed all his right, title and interest in the land in controversy to Katherine M. Bell and James L. Crittenden, but the action was continued in the name of the original plaintiff. At the time of prosecuting the appeal from the decree of June 29, 1901,

the defendant Staacke made and executed a deed of the property described in the decree in favor of Katherine M. Bell and James L. Crittenden and deposited the same in the registry of the Court in order to obtain a stay of execution as required by the laws of the State of California. The undivided one-half interest conveyed to Crittenden is now vested in the complainant through mesne conveyances. Upon the retrial of the action upon the same pleadings the trial Court decreed that the defendant Staacke held the title to the land in trust, first, as security for the payment of the sum of approximately \$95,000 due the estate of Thomas Bell, deceased (being the amount found due in the cross-complaint at the former trial, with interest), and second, in trust for the use and benefit of the plaintiff. A sale of the land was decreed for the payment of this indebtedness, together with costs. The plaintiff appealed from this judgment and also from an order denying a motion for a new trial, but the appeal from the judgment was dismissed (83 Pac., 245) and the order denying the motion for a new trial was affirmed (91 Pac., 322). The property was thereafter sold as directed by the decree and Teresa Bell became the purchaser at the execution sale. No redemption was made within the time provided by law and in due course the purchaser received a deed from the commissioner who conducted the sale.

On the first day of February, 1892, George Staacke executed his promissory note in favor of The San Francisco Savings Union for the sum of \$60,000, and at the same time made and executed a deed of the 10,000 acre tract and also of a 4000 acre tract not in controversy here to Henry C. Campbell and Thaddeus D. Kent as trustees to secure the payment of the note. Campbell and Kent were afterwards succeeded by The Mercantile Trust Company of San Francisco, a corporation, as trustee. While the action of John S. Bell against George Staacke and others was still pending Katherine M. Bell, James L. Crittenden and one Sidney M. Van Wyck, Jr., claiming as successors in interest of John S. Bell, brought an action against The San Francisco Savings Union,

its trustees, and the successors in interest of Thomas Bell, deceased, to obtain a decree quieting the title of the plaintiffs in and to the 10,000 acre tract above referred to against the trust deed to Campbell and Kent. In this action a cross-complaint was filed by The San Francisco Savings Union setting up its right under the deed of trust, and upon the trial a decree was entered directing The Mercantile Trust Company trustee to sell both tracts of land, selling the 10,000 acre tract first, and to pay out of the proceeds of the sale to The San Francisco Savings Union the amount found to be due it on its note and the balance of the proceeds, if any, to the defendant Staacke, his heirs and assigns. It was further adjudged that the plaintiffs take nothing by their action. An appeal was prosecuted from this judgment to the Supreme Court of the State and also from an order denying a motion for a new trial, but the order denying the motion for new trial was affirmed and the cause remanded to the Court below with directions to modify its judgment by deducting therefrom the amount of approximately \$16,000, and as thus modified the judgment was in all things affirmed (94 Pac., 225). This decree was later paid and satisfied by Teresa Bell without a sale of the premises.

The bill and answers are very voluminous, but I deem the foregoing statement sufficient to a proper understanding of the legal questions involved. As will be observed, the complainant bases its claim of right or title on the deed from John S. Bell to Crittenden, on the first or original decree in *Bell v. Staacke*, *supra*, and on the deed deposited by Staacke with the Clerk of the Court in order to effect a stay of proceedings pending the appeal; and this notwithstanding the fact that the decree upon which it relies was afterwards vacated by the Supreme Court of the State and an entirely different decree entered upon a retrial, which was later affirmed by the Supreme Court on appeal. By the latter decree and the judicial sale made thereunder every right, title and interest of John S. Bell and his successors in interest became vested in the purchaser at the sale under the

commissioner's deed. But the complainant seeks to avoid the binding force of the second decree on several grounds. First. Because after dismissing an appeal from the final judgment the Supreme Court of the State was without jurisdiction to award a new trial. Second. Because the legal title to the property was vested in Campbell and Kent as trustees and the whole proceeding before the Court was therefore *coram non judice* and void; and, lastly, because the decree in *Bell v. San Francisco Savings Union* was later in point of time than the decree in *Bell v. Staacke* and is inconsistent therewith.

1. These several contentions are wholly without merit. Whether the Supreme Court of the State of California has jurisdiction to award a new trial in an action after dismissing an appeal from a final judgment depends solely and exclusively upon the constitution and laws of that state, and the repeated decision of its highest court upholding the jurisdiction are not subject to review in this or any other tribunal.

2. A court of equity would scarcely permit the complainant to claim under the original decree and in opposition thereto at the same time, but aside from this the contention is without merit. While undoubtedly title vests in a trustee for some purposes under the laws of the State of California, nevertheless in that State as well as elsewhere, until there is a breach of condition, the cestuique trust is deemed the beneficial owner of the property, may convey or encumber it, and may maintain any real action affecting the title.

Sacramento Bank v. Alcorn, 121 Cal., 279.

Hodkins v. Wright, 127 Cal., 688.

3. On this point again the complainant is confronted by an adverse decision of the Supreme Court of the State. In the case of *Bell v. San Francisco Savings Union*, 153 Cal., 74, the Court expressly held that there was no inconsistency between the two decrees; that the matter *sub judice* in *Bell v. Staacke* was excepted from the operation of the decree in the *Savings Union Case*, and this is manifestly true.

For the foregoing reasons it affirmatively appears

from the bill of complaint and the admitted judgments set forth in the answers that the bill is without equity and should be dismissed. Let a decree be entered accordingly.

(Endorsed.) Opinion. Filed July 8, 1913. Wm. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Decree.

This cause came on to be heard in the District Court of the United States, for the Southern District of California, Southern Division, the Honorable Frank H. Rudkin, District Judge of the United States for the Eastern District of Washington, duly presiding, on the 20th day of March, A. D. 1913, upon the defense heretofore presentable by plea in bar made in the pleadings to the bill of complaint on file herein as follows: The joint and several answer of the defendants Teresa Bell, as administratrix with the Will annexed of the estate of Thomas Bell, deceased, and Teresa Bell, individually; the joint and several answer of the defendants Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, John Lewellyn Auzeais and Peter J. Crosby; the joint and several pleas in bar of the defendants W. P. Hammon and F. C. Van Deinse, heretofore overruled; and the joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse; and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of

the defendants W. P. Hammon and F. C. van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;

Now therefore it is by the Court Ordered, Adjudged and Decreed that the bill of complaint herein be and the same is hereby dismissed and that the above named defendants do have and recover from the complainant their costs herein taxed at \$—.

Dated July 17, 1913.

Frank H. Rudkin, Judge.

Decree entered and recorded July 21, 1913.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Costs taxed in favor of defendants W. P. Hammon and F. C. Van Deinse at \$95.30.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

(Endorsed) Decree filed July 21st, 1913, Wm. M. Van

(TITLE OF COURT AND CAUSE.)

Dyke, Clerk.

Title of Court and Cause.

Notice of Motion to Correct Decree.

To Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust

Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, and Teresa Bell, and to your Solicitor, T. Z. Blake-man:

To Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerai and P. J. Crosby, and to Peter J. Crosby your Solicitor:

To W. P. Hammon and F. C. Van Deinse and to Chauncy S. Goodrich, your Solicitor:

To Associated Oil Company and Edmund Tauszky your Solicitor:

To Catherine M. Bell, also known as Kate M. Bell, and to Sullivan and Sullivan and Theo. J. Roche, your Solicitors:

You and each of you are hereby notified and will please take notice that on the 6th day of December, 1913 at 10 o'clock in the forenoon of said day, the complainant will move and apply to the above entitled court at and in the courtroom thereof in the United States Post-office Building in the City of Los Angeles, County of Los Angeles, State of California, to correct and modify the decree heretofore made and signed on the 17th day of July, 1913, by Honorable Frank H. Rudkin, Presiding Judge of said Court by striking out of said decree the following words, to-wit:

"and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and

several answer of the defendants W. P. Hammon and F. C. Van Deinse;”

and also by inserting in place of said words the following language, to-wit:

“and at the said hearing it being admitted and stipulated by the complainant and defendants above named, that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and the Superior Court of the State of California in and for the City and County of San Francisco, are substantially correct copies thereof.”

You are further notified and will please take notice that the said motion to correct and modify said decree will be made and based upon the records, files and proceedings in this action and upon the affidavit of James L. Crittenden hereto annexed, and upon each of the following grounds, to-wit:

1. That the statement made and contained in said decree and above quoted is not true and is incorrect;

2. That no such admission or stipulation as is stated in said decree was ever made or entered into by the complainant or by the solicitors, or any of the solicitors for said complainant;

3. That the only admission or stipulation made and entered into by the complainant, or by its solicitors, or any of its solicitors, on the hearing of the above entitled action, or any proceedings therein was

“that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and the Superior Court of the State of California in and for the City and County of San Francisco, are substantially correct copies thereof;”

4. That justice demands and will be promoted by the

correction and modification of said decree in accordance with this motion and application;

5. That said decree should be made to conform to the truth.

Respectfully Submitted,

Richards and Carrier and James L. Crittenden, Solicitors for Complainant.

Barclay Henley and Jacob M. Blake of Counsel for Complainant.

Good cause appearing therefor it is hereby ordered that the time within which the foregoing notice of motion may be served is hereby shortened to 3 days and service thereof may be made on or before the 2nd day of December, 1913.

Dated November 29, 1913.

Frank H. Rudkin, Judge.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

ss.

James L. Crittenden, being duly sworn deposes and says:

That he is one of the solicitors for Complainant and as such solicitor, with Charles F. Carrier, one of the other solicitors for the Complainant, appeared and represented Complainant on the hearing before the Honorable Frank H. Rudkin, presiding in the above entitled court on the 20 day of March, A. D. 1913, upon certain defenses set up in the pleadings of certain defendants and referred to in the decree made thereafter on the 17th day of July, 1913, by said Honorable Frank H. Rudkin, Judge:

That the only admission and stipulation made on said hearing in open court by the complainant, or any of its solicitors as to judgments, orders and decrees, or copies thereof, contained in, or set forth as exhibits in the pleadings of the respective parties was to the best of deponent's recollection and belief as follows:

"that the papers purporting to be copies of judg-

ments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof:

That when solicitors for defendants requested admission, in open court, as to such copies, deponent stated that he would make the admission which he has herein above stated as to such copies being correct, but made no further or greater admission as to any such judgments, orders or decrees; that the admission and stipulation then made in regard to such copies of judgments, orders and decrees is not correctly or truly stated in said decree in and by the following language, to-wit:

“and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse;”

That the statement as to such admission and stipulation contained in said decree as above quoted is incorrect and untrue in fact, according to the best recollection and belief of deponent, and is prejudicial to the rights and interests of complainant and will in deponent's judgment and opinion be prejudicial to the complainant on the appeal which complainant intends to take and prosecute from said decree; that the form of said decree was not submitted to deponent or to either of the counsel for complainant and was not, as he believes, submitted to

Richards and Carrier, solicitors for complainant, or to either of them prior to the signing and filing thereof by said judge;

That deponent has requested the Honorable Frank H. Rudkin to correct and modify said decree by striking out the words

"and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse;"

and by inserting in place thereof the following language:

"and at the said hearing it being admitted and stipulated by the complainant and defendants above named that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof;"

That said judge has declined to do so without notice being served upon the parties to said suit;

That complainant's solicitors and counsel have requested the solicitors for some of the defendants mentioned in said decree to sign a stipulation consenting to such a modification and correction of said decree and that such solicitors for defendants have declined to do so.

James L. Crittenden.

Subscribed and sworn to before me this 18th day of November, A. D. 1913.

(Seal)

Flora Hall, Notary Public in and for the City and County of San Francisco, State of California.

Received copy of the within notice this 2nd day of December, 1913.

Edmund Tauszky, Atty. for Associated Oil Co.

Chauncey S. Goodrich, Solicitor for W. P. Hammon and F. C. Van Deinse.

Sullivan and Sullivan, and Theo. J. Roche.

Peter J. Crosby, Solicitor for W. E. Bell, also known as Eustace Bell, Thomas Frederick Bell, Bessie M. Bell, (wife of Thomas Frederick Bell), John Lewellyn Auzerai and Peter Crosby.

(Endorsed.) Received copy of within notice of motion and affidavit at San Francisco, Dec. 2d, 1913. T. Z. Blakeman, Solicitor for Teresa Bell et al. Filed Dec. 5, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

Affidvit of Service by Mail.

Groom W. Walker, Jr., being first duly sworn deposes and says:

That he is an attorney at law and a citizen of the State of California over the age of twenty-one years and that he resides in the city of Alameda, County of Alameda, State of California; that Thomas O. Toland is the attorney of record for the Union Oil Company, a corporation, one of the above named defendants, in said cause, and that he, said Thomas O. Toland, has his office at the Union Oil Company Building, in the city of Los Angeles, County of Los Angeles, State of California; that in each of said two places there is a United States Postoffice and between said two places there is a regular communication by mail; that on the second day of December, 1913, deponent served a true copy of the Notice

of Motion and Affidavit herein on said Thomas O. Toland, the said attorney of said defendant, by depositing such copy of Notice of Motion and Affidavit, on said date, in the postoffice at the City and County of San Francisco, State of California, properly enclosed in an envelope, addressed to said Thomas O. Toland, attorney at law, Union Oil Company Building, Los Angeles, California, said place of office and prepaying the postage thereon.

Croom W. Walker.

Subscribed and sworn to before me this 4th day of December, A. D. 1913,

Hortense Gardner, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

(Copy of Notice of Motion and Affidavit attached to the above affidavit of service omitted, as having already been incorporated in the transcript therein).

(Endorsed.) Affidavit of service of Notice of Motion to correct decree and affidavit, and affidavit of service by mail. Filed Dec. 5, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

T. Z. Blakeman being duly sworn, deposes and says: That he is the solicitor for the defendants, Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, and all other defendants in the above entitled cause for whom he appeared as solicitor in the answer of said defendants filed in said cause June 3, 1912; that as such solicitor he attended at a session of the said District Court at Los Angeles on the 19th and 20th of March, 1913; that it had been announced that the Honorable Frank H. Rudkin, the judge who had heard and passed upon demurrers to the Bill of Complaint in said action thereto, that he would on March the 19th, 1913, proceed with the hearing of said cause so far as to determine the sufficiency of the judgments of the State Courts in the

actions of Bell vs. Staacke, et al., and of Bell vs. San Francisco Savings Union, et al., and subsequent proceedings therein as a defense to the cause of action alleged in the complainant's Bill of Complaint.

Prior to attendance at the session of the said Court as aforesaid, affiant in behalf of the defendants for whom he appeared and in behalf of the defendants for whom Peter J. Crosby appeared as solicitor, and in behalf of the defendants for whom Chauncy S. Goodrich appeared, procured exemplified copies of the final judgments of the Superior Court of the County of Santa Barbara, State of California, and of the Supreme Court of the State of California of those two actions entitled John S. Bell vs. Gerge Staacke, et al., and Bell vs. San Francisco Savings Union, et al., respectively as pleaded in the answers of the said defendants;

That the matter aforesaid came on for hearing before the Honorable Frand H. Rudkin, Judge, on the 20th day of March, 1913.

There were present at the calling of the said cause for hearing Chauncy S. Goodrich, solicitor for the defendants, Hammon, et al., Peter J. Crosby, solicitor for the defendants Eustace Bell, et al., affiant a solicitor for the defendants Teresa Bell, administratrix, etc., et al., James L. Crittenden and Mr. Carrier, solicitors for the complainant. Affiant stated to the Court that he had come prepared to prove the judgments and proceedings in the Superior Court of Santa Barbara, and of the Supreme Court of the State of California in the said actions of Bell vs. Staacke, et al., and Bell vs. San Francisco Savings Union, et al., alleged in the answers of said defendants by exemplified copies thereof.

It was thereupon stipulated in open Court by and between said solicitors for complainant and said solicitors for said defendants respectively, that the judgments, orders and decrees of the Superior Court of the State of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, and of the Supreme Court of the State of California and all pro-

ceedings thereunder as pleaded in the answers of said defendants, were substantially as alleged therein. Thereupon oral argument was made before the Court by the respective solicitors aforesaid for the complainant and for the said defendants upon the validity and effect of said judgments, orders and decrees and proceedings thereunder, and thereupon submitted to the Court upon briefs to be filed within fifteen days on behalf of the complainant, and within fifteen days thereafter on behalf of the said defendants and ten days for a reply on behalf of the complainant.

Thereafter, this affiant was served with the Points and Authorities on behalf of the complainant on the 14th day of April, 1913. On page 1 of said Points and Authorities on behalf of the complainant occurs the following statement:

"The writer of this brief has been confronted with the perplexing problems of law presented by the pleadings of this case since the expiration of the time limited by the Court for the presentation of Points and Authorities as to the effect of certain decrees set out in the Bill and Answers thereto."

Affiant states that the answering brief of affiant and of the said Peter J. Crosby was served upon the solicitors for the complainant on the 28th day of April, 1913; that on page 34 of said brief the following statement is made:

"It was stipulated by the respective counsel herein in open court preceding the oral argument that the findings and judgment in Bell vs. Staacke of June 29, 1901, and the findings and judgment in Bell vs. San Francisco Savings Union were substantially correct as set forth in the Bill of Complaint, and that the subsequent proceedings in that action and in Bell vs. San Francisco Union were substantially correct as set forth in the answers of the defendants."

Affiant further states that in the "Points and Authorities" of defendants W. P. Hammon and F. C. Van Deinse served upon the solicitors for complainant within the time allowed as aforesaid by the Court, there occurs a statement as follows:

"The present hearing is upon the issues presented by the existence, admitted by the complainant, of several judgments, orders and decrees of the Superior Court of Santa Barbara; The Superior Court of the City and County of San Francisco and the Supreme Court of the State of California which have been pleaded by the defendants as a separate affirmative defense to the whole Bill. These judgments and orders are pleaded on page 44 of the answer of these defendants."

That affiant was served with complainant's reply brief on the 8th day of May, 1913. On page 13 of said complainant's Reply Brief there is a statement as follows:

"The various defendants who have filed Reply Briefs herein have united in attacking the equity in the Bill of complaint. Their view of the manner of equity in the Bill follows naturally from the theory of the defense which they have advanced."

That nowhere does it appear either in the opening brief of complainant's solicitors or in their Reply Brief that solicitors for complainant were proceeding upon any stipulation concerning copies of orders, judgments or decrees or purported copies thereof; and affiant states that the said Reply Brief in behalf of the complainant did not contain any objection to the stipulation on which the matter was submitted to the Court as stated as aforesaid in the briefs on behalf of the defendants.

Affiant further states that on the 9th day of July, 1913, he received by letter from the clerk of the Court, a copy of the opinion rendered by the said Judge, the Honorable Frank H. Rudkin, and affiant has been informed and verily believes and therefore alleges that a copy of the said opinion was, on or about the said day, to-wit, July the 9th, 1913, received by the solicitors for the complainant, and that there occurs in the said written opinion the following statement:

First on Page 1 thereof, to-wit:

"The defendants have pleaded in bar certain judgments of the Courts of the State of California and a judicial sale made thereunder and it has been agreed

between the parties that such defenses may be separately heard and disposed of before the trial of the principal case, under equity rule 29."

Second on Page 6 thereof, to-wit:

"For the foregoing reasons it affirmatively appears from the Bill of Complaint and the admitted judgments set forth in the answers, that the Bill is without equity and should be dismissed. Let a decree be entered accordingly."

Affiant states that he never heard it stated or intimated by any of the solicitors for the complainant prior to on or about the 20th day of November, 1913, that any of the solicitors for the complainant claimed that there was any erroneous or incorrect statement in the decree of the Court as entered herein. The first that affiant had any intimation that it was claimed by any of the solicitors for the complainant, that there was any incorrect or erroneous statement in the said decree was, as aforesaid, on or about the 20th day of November, 1913, when some letters of solicitors' for complainant to the said Judge were exhibited to affiant and affiant was asked on behalf of the solicitors for complainant to stipulate that some change might be made in the said decree as entered. Affiant refused to make or enter into any such stipulation.

Affiant further states that he has read a copy of the affidavit of James L. Crittenden annexed to "Notice of Motion to correct Decree," and affiant denies that the statement of the stipulation contained in the said decree is incorrect and untrue or incorrect or untrue, and further affiant sayeth not.

T. Z. Blakeman.

Subscribed and sworn to before me this 3rd day of November, 1913.

(Seal.)

Edith W. Burnham, Notary Public in and for the City and County of San Francisco.

(Endorsed.) Affidavit of T. Z. Blakeman in opposition to Motion to Modify Decree. Received copy of within affidavit at San Francisco this 4th day of Decem-

ber, 1913. James L. Crittenden, Solicitor for Complainant. Filed December 6, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

County of Alameda, ss.

Peter J. Crosby being duly sworn, deposes and says: That he is the solicitor for the defendants W. E. Bell, also known as Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell) and also known as Elizabeth M. Bell, John L. Auzeais and Peter J. Crosby;

That affiant has been served with a copy of the affidavit of James L. Crittenden, attached to a Notice of Motion to correct that certain Decree heretofore made and signed on the 17th day of July, 1913 by Hon. Frank H. Rudkin, residing Judge of the above entitled Court in the above entitled matter, by striking out of said Decree certain portions thereof, relating to a Stipulation made in open court at the hearing of the above entitled matter on the 20th day of March, 1913, and by inserting in lieu of said portion so sought to be struck out of said Decree, another and different Stipulation;

That affiant has read the said affidavit of said James L. Crittenden, and answering the allegations contained therein, alleges, to the best of his, this deponent's, recollection and belief, that the said Stipulation as set forth in the said Decree, is, in its scope and substance, the Stipulation made and entered into in open Court on the 20th day of March, 1913, in the above entitled matter by the Solicitors for Complainant and by Messrs. Chauncy S. Goodrich, T. Z. Blakeman and Peter J. Crosby representing certain defendants, respectively; and further, to the best recollection and belief of deponent, deponent avers that the Stipulation which complainant seeks to have inserted in said Decree in lieu of the portion so sought by it to be stricken therefrom, is not the only admission and Stipulation, or only admission, or Stipulation made on said hearing by the Com-

plainant, or any of its Solicitors, as to judgments, orders and decrees, or copies thereof contained in or set forth as exhibits in the pleadings of the respective parties;

Deponent further alleges, upon his best recollection and belief, that the Stipulation so now proposed by Solicitors for Complainant to have inserted in said Decree, was not made and entered into, or made, or entered into, in open Court at said hearing on the 20th day of March, 1913, as alleged in said affidavit of said James L. Crittenden, or at all;

Deponent, upon his best recollection and belief, denies that the admission and Stipulation contained in said Decree is incorrect and untrue, or incorrect, or untrue, in fact.

Further deponent sayeth not.

Peter J. Crosby.

Subscribed and sworn to before me this 4th day of December, 1913.

(Seal.)

H. S. Craig, Notary Public in and for the County of Alameda, State of California.

- (Endorsed.) Affidavit of Peter J. Crosby in opposition to Motion to Modify Decree. Service of the within affidavit admitted by receipt of copy thereof this 4th day of December, 1913. James L. Crittenden, Solicitor for Complainant. Filed December 6, 1913. Wm. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Affidavit in Opposition to Motion for Modification of Decree.

State of California,

City and County of San Francisco, ss.

Chauncy M. Goodrich, being first duly sworn, deposes and says: That he now is, and at all times hereinafter mentioned has been, an attorney at law and solicitor admitted to practice in all the courts of the State of California and in the above entitled District Court of the United States, and during all such times has been and now is one of the solicitors for the defendants W. P.

Hammon and F. C. Van Deinse in the above entitled proceeding; that on the 3rd day of June, 1912, affiant as such solicitor served and filed herein the joint and several demurrers of the said defendants to the bill of complaint herein; that on the 11th day of November, 1912, the said demurrer, together with the demurrers of other of the defendants herein, came on to be heard in the above entitled Court before Honorable Frank H. Rudkin; that upon the argument of the said demurrers affiant argued in the main that the bill was barred by the Statute of Limitations and by the laches of the complainant, and T. Z. Blakeman, Esq., solicitor for certain others of the defendants, argued that the said bill was barred by certain judgments of the Supreme Court of the State of California and of the Superior Courts of the State of California, in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively; that upon such argument the complainant was represented by James L. Crittenden, Esq., and Charles F. Carrier, Esq.; that in reply to the argument of the said T. Z. Blakeman, Esq., the said solicitors for complainant then and there admitted the existence of the said judgments but contended and argued that the same could not be taken cognizance of by the Court upon demurrer, or unless the same were specially and specifically pleaded; that thereafter authorities on behalf of the parties to the said demurrers were filed with the Court and the said demurrers were submitted; that thereafter the Court overruled the said demurrers upon the ground, among others, that it could not take cognizance of the said judgments called to its attention by the said solicitor for certain of the defendants, and thereupon filed its opinion herein in support of such ruling in which, among other things, it said:

"If I felt at liberty to take judicial notice of the numerous orders and decisions that may have been entered in the courts of California in the course of the protracted litigation referred to in the bill, I would perhaps feel constrained to hold that there is no equity in the bill and that the demurrer should be sustained.

But I am satisfied I am not authorized to take judicial notice of judgments entered in the courts of the state. Doubtless this court will take judicial notice of the general rules of law declared by the Supreme Court of California in written opinions, but it will not take such notice of the judgment in any particular case unless properly pleaded and proved."

That on the 29th day of November, 1912, affiant served, and on the 2d day of December, 1912, filed, herein the joint and several pleas, and answers fortifying the same, of the said defendants W. P. Hammon and F. C. Van Deinse, in which affiant set up and pleaded, according to the practice in equity, the existence of the same judgments called as aforesaid to the attention of the Court upon the argument of the demurrers, and also certain acts performed in conformity with said judgments; that the said pleas were so served and filed prior to the going into force and effect of the new rules of practice for the courts of equity of the United States, promulgated by the Supreme Court of the United States on the 4th day of November, 1912, which said new rules of practice abolished pleas in bar; that the said pleas and the joint and several motion of the said defendants W. P. Hammon and F. C. Van Deinse for judgment on the pleas and the replication of the complainant thereto came on to be heard before the said Honorable Frank H. Rudkin on the 10th day of March, 1913, and were heard and argued on the same day; that upon said argument the complainant was represented by its said solicitors James L. Crittenden, Esq., and Charles F. Carrier, Esq.; that upon said argument the said solicitors for complainant admitted the existence of the said judgments pleaded as aforesaid, and the performance of the said acts thereunder, but contended that under the said new rules of practice the same should have been set up by affirmative answer and not by plea; that the said new rules of practice abolishing pleas in bar having gone into force and effect on the 1st day of February, 1913, and the said hearing being held after the said date, the Court then and there overruled the said pleas and the

said motion for judgment thereon, with leave to the said defendants W. P. Hammond and F. C. Van Deinse to file their answer or answers to the bill of complaint, wherein the matters set forth and pleaded in the said pleas might be affirmatively pleaded; that the said Court then and there asked affiant how soon affiant could serve and file such answer or answers, and upon affiant's reply that he would endeavor to serve and file such answer or answers prior to the 19th day of March, 1913, the Court thereupon, with the consent of all counsel, including the said solicitors for the complainant, fixed the said 19th day of March, 1913, for the hearing of the said cause upon the affirmative defense of the said judgments and the acts performed thereunder;

That affiant on the 14th day of March, 1913, served, and on the 17th day of March, 1913, filed, herein the joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse, wherein were set forth and pleaded the said judgments and acts; that on the 19th day of March, 1913, the Court was unable, through pressure of other matters, to hear the said cause upon the issues presented by the said bill of complaint and the said affirmative answer of the said judgments and acts; that the said hearing was therefore postponed to the 20th day of March, 1913; that on the said 20th day of March, 1913, the said cause came on to be heard before the said Honorable Frank H. Rudkin upon the said bill of complaint and the said joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse, and particularly upon the said affirmative defense of the said judgments and acts therein pleaded, and upon the answers of other defendants herein; that at the said hearing affiant, together with the said T. Z. Blakeman, Esq., had in his possession and proceeded to present in evidence correct exemplified and certified copies of the originals of all the said judgments, and the deeds and other papers executed thereunder, pleaded as afore-said; that thereupon the said solicitors for complainant, James L. Crittenden, Esq., and Charles F. Carrier, Esq., specifically and unqualifiedly stipulated and admitted in

open Court that judgments of the said Supreme Court of the State of California and of the Superior Courts of the State of California in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively, existed, and that acts had been performed thereunder, substantially as pleaded in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse, and substantially as pleaded and set forth in the answers of the other defendants herein; that thereupon the matter of the said defense was fully argued orally and submitted upon briefs; that during the said oral argument both the said counsel for complainant and the said T. Z. Blakeman, Esq., and affiant for the defendants, cited and quoted and read from the several opinions of the Supreme Court of the State of California given in support of the said judgments pleaded as aforesaid; that at all times during the said argument the existence of the said judgments, and the performance of the said acts, as pleaded was admitted by the said solicitors for the complainant, whose argument was that such judgments, or certain of them, though all of them were existing and had been rendered as pleaded, were nevertheless invalid and the said acts admitted to have been performed thereunder therefore void; that thereafter lengthy briefs in the said cause, in the main upon the question of the validity of the said judgments and the said acts, were served and filed herein by the respective parties, two whereof were served and filed by the said solicitors for the complainant; that the said briefs on behalf of the complainant took for granted and admitted the rendition and existence of the said judgments, and the performance of the said acts, pleaded as aforesaid, and contended merely that the said judgments, or some of them, were invalid and the said acts performed thereunder void; that the contention of complainant that the said judgments and acts, though admittedly rendered, existing and performed, were invalid, was expressed in its opening brief, at page 6, as follows:

“Complainant contends that the Court had no juris-

diction after the 28th of June, 1901, over said decision, or judgment and that all subsequent proceedings in *Bell vs. Staacke* were void for want of jurisdiction."

that at no time since the 11th day of November, 1912, when the first hearing in the above entitled proceeding was had, has any of said counsel for complainant denied or questioned the rendition or existence of any of the said judgments, or the performance of the said acts thereunder, as pleaded, but, on the contrary the said counsel have at all times, both expressly and tacitly, admitted the rendition and existence of such judgments, and the performance of such acts, and having made such admission have thereupon proceeded to argue that the judgments so rendered and existing, and the acts so performed, were nevertheless invalid;

That on the 8th day of July, 1913, the Court filed its written opinion herein in which it considered and discussed the validity and effect of the said judgments, and of the said acts performed thereunder, in which it assumed and recognized, as under the facts it could not do otherwise, that the rendition and existence of the said judgments, and the performance of the said acts, as pleaded was admitted and stipulated to by the complainant and its said solicitors and that the only question was as to the validity and effect of the said judgments, or some of them, and the said acts performed thereunder: that in the said opinion the Court said, preliminarily:

"That defendants have pleaded in bar certain judgments of the courts of the State of California and a judicial sale thereunder, and it has been agreed between the parties that such defense may be separately heard and disposed of before the trial of the principal case, under Equity Rule 29."

In the said opinion it is further said, speaking of certain of the said judgments pleaded as aforesaid by the said defendants:

"But the complainant seeks to avoid the binding force of the second decree on several grounds. First. Because after dismissing an appeal from the final

judgment the Supreme Court of the State was without jurisdiction to award a new trial. Second. Because the legal title to the property was vested in Campbell and Kent as trustees and the whole proceeding before the court was therefore *coram non judice*and void; and, lastly, because the decree in *Bell vs. San Francisco Savings Union* was later in point of time than the decree in *Bell vs. Staacke* and is inconsistent therewith.

1. These several contentions are wholly without merit."

The said opinion closes as follows:

"For the foregoing reasons it affirmatively appears from the bill of complaint and the admitted judgments set forth in the answers that the bill is without equity and should be dismissed. Let a decree be entered accordingly."

That thereafter, in accordance with the practice in equity, and particularly in accordance with Rule 57 of the above entitled District Court of the United States, affiant prepared and, with the consent of the other solicitors for the defendants, forwarded to the Clerk of the above entitled Court for transmission to the said Honorable Frank H. Rudkin the form of the decree herein; that in the said form of decree appeared the following recital, a modification of a portion whereof is now sought by the complainant:

"At the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done, substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P.

Hammon and F. C. Van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;"

That the said recital properly and correctly set forth the stipulations and admissions made and the proceedings had at the said hearing; that the said decree was made and signed, in the form so prepared by affiant, by the said Honorable Frank H. Rudkin on the 17th day of July, 1913, and was filed herein on the 21st day of July, 1913; that on the 23rd day of July, 1913, affiant received from the Clerk of the said District Court a certified copy of the decree, and on the 24th day of July, 1913, forwarded copies of the said decree to T. Z. Blake-man, Esq., and Peter J. Crosby, Esq., solicitors for certain of the defendants herein, and a similar copy of the said decree to James L. Crittenden, Esq., solicitor for the complainant herein; that on the said 24th day of July, 1913, affiant also served upon the said solicitors for complainant a memorandum of costs and disbursements of the said defendants W. P. Hammon and F. C. Van Deinse in the said cause, together with a notice that the same would be taxed on the 4th day of August, 1913; that the said costs were on the said day taxed in favor of the said defendants, without question raised or made by the complainant or any of its said solicitors;

That no suggestion of any incorrectness in the said decree was ever made to affiant by the complainant or any of its solicitors, or anyone on its behalf, until the 17th day of November, 1913, when a clerk of Jacob M. Blake, Esq., of counsel for complainant, showed to affi-

ant certain correspondence theretofore had between the solicitors for complainant and the said Honorable Frank H. Rudkin, and thereupon requested affiant to stipulate to a modification of the said decree substantially as now prayed for by the complainant; that affiant then and there refused to enter into any such stipulation of modification, for the reasons: First, that it appeared from the said correspondence that the solicitors for complainant had attempted, but unsuccessfully, to obtain such modification from the Court improperly, *ex parte*, and without notice to the defendants or their counsel; second, because the said decree was not subject to or capable of modification; and third, because the said decree was correct and the recitals of the suggested modification were contrary to the facts;

That the said decree is clear and unambiguous; that the same does not, expressly, impliedly, necessarily or at all adjudge that the complainant stipulated to the validity of the said judgments or acts, but declares that the complainant stipulated, as was the fact, that the said judgments were rendered and the said acts performed; that any modification of the decree as suggested by Complainant would render the same ineffective for any purpose and would result in the travesty of justice; that if there were any possible ambiguity in the said decree and if there were any disposition, or any attempt made, by any person, to claim that the decree recited a stipulation on the complainant's part to the validity of the said judgments and acts, the whole record in the cause, including the opinion of the Court, the briefs of counsel, and this affidavit, would show conclusively and without shadow of doubt that the complainant never admitted the validity of the said judgments or acts and that the whole question repeatedly and at length argued before the Court in this cause was the very question of the validity of such judgments and acts.

That the motion herein for a modification of the said decree should be denied for the reasons: First, that the same has been improperly sought by solicitors for complainant; second, that the Court has no longer any juris-

diction to modify the said decree; and third, because the decree is correct and the modification suggested is contrary to the facts.

That this proceeding is an attempt to obtain from this court and from the Appellate Courts of the United States a review of final decisions rendered many years ago by the Courts of the State of California; that an examination of the said judgments and acts shows that there is not the slightest scintilla of equity in the bill of complaint; that the defense of this cause has proved a substantial burden to the defendants; that the pendency of this cause, prior to the decree herein, has seriously affected the merchantability of the titles of the defendants to the lands described in the bill of complaint; that an unnecessary modification at this time of the decree made and entered herein over four months ago cannot but renew the hardship which this proceeding has placed upon the defendants; that justice will not be served by any modification of the decree but, on the contrary, will be served only by a denial of the motion of complainant.

And affiant further deposes and says: That no copies of the two letters written by the several solicitors for the complainant to the Honorable Frank H. Rudkin prior to the 17th day of November, 1913, have yet or ever been served upon or left with affiant, nor have any copies of the answers of the Honorable Frank H. Rudkin to such communications of counsel, refusing to modify the said decree ex parte, been so served or left.

Chauncey S. Goodrich.

Subscribed and sworn to before me this 4th day of December, A. D. 1913.

Charles Edelman, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

Service of the within affidavit and receipt of a copy thereof is hereby admitted this 4th day of December, 1913.

James L. Crittenden and Richards & Carrier; by James L. Crittenden, Solicitors for Complainant.

(Endorsed.) Affidavit of Chauncey S. Goodrich in Op-

position to Motion for Modification of Decree. Filed December 6, 1913. Wm. M. Van Dyke, Clerk; By C. E. Scott, Deputy Clerk.

TITLE OF COURT AND CAUSE.

Affidavit in Reply of James L. Crittenden on Motion for Modification of Decree.

State of California,

City and County of San Francisco, ss.

James L. Crittenden, being duly sworn, deposes and says:

That he is now, and at all the times since prior to the commencement of the above entitled suit and for more than twenty years has been, an attorney at law and solicitor admitted to practice in all of the courts of the States of New York, California and Nevada and in all of the United States courts in the states of California and Nevada and in the Supreme Court of the United States; that he is one of the solicitors for the complainant in the above entitled suit and has been such solicitor in such suit since the commencement thereof; that he was one of the attorneys for the plaintiffs in the several actions in the Superior Court of the State of California in and for the County of Santa Barbara mentioned in the bill of complaint in the above entitled suit, and participated as such attorney in all the trials and proceedings in said actions in the said state court; that he, deponent, was not present on the 11th day of November, 1912, in the above entitled court on the hearing of the demurrers of the defendants to the bill of complaint in the above entitled suit and did not participate in the argument thereof; that the only solicitor representing the plaintiff on the hearing and argument of said demurrers was Charles F. Carrier, as deponent is informed and believes; that the complainant in and by its Bill in the above entitled suit claimed, averred and alleged that the first judgment rendered and entered in the action brought by John S. Bell vs. George Staacke et al., in said Superior Court was final and that said Superior Court and the Supreme Court of the State of California had no

jurisdiction whatever in or over said action after the entry of said first judgment of said Superior Court in said action, and that the same claim and contention was made on the hearing in the above entitled court on the 20th day of March, 1913, by the solicitors for complainant, also the claim and contention that every proceeding in said action of John S. Bell vs. George Staacke et al., subsequent to the entry of the first judgment therein was invalid, illegal and void; that the statement of Chauncey S. Goodrich in his affidavit sworn to on the 4th day of December, A. D. 1913

"that the said solicitors for complainant, James L. Crittenden, Esq., and Charles F. Carrier, Esq., specifically and unqualifiedly stipulated and admitted in open Court that judgments of the said Supreme Court of the State of California and of the Superior Courts of the State of California, in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively, existed, and that acts had been performed thereunder, substantially as pleaded in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse, and substantially as pleaded and set forth in the answers of the other defendants herein;"

is incorrect and untrue in fact to the best of deponent's knowledge, recollection and belief; that said statement refers to what occurred on the hearing on the said 20th day of March, 1913, and that to the best of deponent's knowledge, recollection and belief deponent as solicitor for complainant when the matter of making an admission was presented on said hearing, stated

"that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof;"

intending and assuming in making said statement that

the copies of such purported judgments, orders and decrees alleged or claimed to have been rendered and entered would be considered by all parties in evidence in place of certified copies thereof; that, as plaintiff and its solicitors claimed and alleged all such purported judgments, orders and proceedings in said action of John S. Bell vs. George Staacke et al, claimed by defendants to have been made after the entry of the first judgment were invalid, and void for want of jurisdiction, they did not intend to admit or to make any stipulation or admission that might be construed to admit any jurisdiction on the part of either said Superior or Supreme Courts of the State of California subsequent to the entry of said first judgment or to admit the validity of any purported or pretended judgments, orders or proceedings in said action of John S. Bell vs. George Staacke et al., after the entry of said first judgment; and deponent as solicitor for plaintiff did, to the best of his knowledge, recollection and belief, limit the admission and stipulation made in open court as hereinabove stated, and as stated in his affidavit dated the 18th day of November, 1913, used on this motion.

James L. Crittenden.

Subscribed and sworn to before me this 5th day of December, A.*D. 1913.

Flora Hall, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

Received copy of the within affidavit of James L. Crittenden, is hereby admitted at Los Angeles in open Court this sixth day of December, 1913.

T. Z. Blakeman, Solicitor for certain defendants. Peter J. Crosby, Solicitor for certain defendants. Charles W. Slack, Chauncey S. Goodrich, Solicitors for certain defendants.

(Endorsed.) No. 140 Civil. In Equity. Affidavit in Reply, James L. Crittenden on Motion for Modification of Decree. Filed December 6, 1913. Wm. M. Van Dyke, Clerk, By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

This cause came on this day to be heard on motion of the complainant to modify the following recital contained in the Decree heretofore rendered and entered in this cause on the 21st day of July, 1913, namely:

"And at the said hearing, it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each the said several answers, and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P. Hammon and F. C. Van Deirse."

and the Court being fully advised in the premises, it is considered, adjudged and decreed that said recital be, and the same hereby is modified by adding thereto the following:

"But the complainant did not stipulate or admit that such judgments or decrees were valid or binding, or that the said several courts had jurisdiction to render or enter the same."

It is further ordered and decreed that this modification and order be entered nunc pro tunc as of July 21, 1913.

Done in open court this 8th day of December, A. D. 1913.

Frank H. Rudkin, Judge.

Decree entered and recorded December 8th, 1913.

Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(Endorsed.) No. 140 Civil. United States District Court Southern District of California, Southern Division. U. S. Oil and Land Company vs. Teresa Bell, etc., et al. Modification of Decree. Filed De-

ember 8, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: the July Term, A. D., 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the eighth day of December, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants. No. 140 Civil S. D.

Chauncey S. Goodrich, Esq., appearing as counsel for defendants, and no counsel appearing on behalf of complainant: an amendment nunc pro tunc as of July 21, 1913, to the decree heretofore made and entered herein is now signed and filed in open court and directed to be entered, and thereupon it is by the court ordered that the motion to modify said decree be, and the same hereby is denied, except as to the matters and things covered by the amendment to said decree this day signed and filed herein. Said amendment to the decree is as follows, to-wit:

(Amendment to Decree omitted, as having been hereinbefore copied in this Transcript.)

(TITLE OF COURT AND CAUSE.)

Assignment of Errors.

U. S. Oil & Land Company, the above-named complainant and appellant, hereby assigns errors in the decree of the District Court of the United States in and for the Southern District of California, Southern Division, dismissing complainant's Bill of Complaint in the above-entitled cause, dated the seventeenth day of July, 1913, and entered on the twenty-first day of July, 1913, and modified by an order and decree dated and entered nunc pro tunc as of July 21, 1913, on the eighth day of December, 1913, in the following particulars:

First: That the Court erred in holding and deciding

that the relations between John S. Bell, his grantees and those claiming by, through and under him and them, including the complainant herein, on the one hand, and George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, their successors and assigns on the other hand, and the determination of their respective rights, titles, interests, estates and claims, both in law and in equity, to the real property described in paragraph one of complainant's Bill of Complaint herein were not fully and completely or at all, found, declared and decided in the decision and findings of fact made and filed on the sixth day of March, 1901, and on the seventh day of June, 1901, in the Superior Court of the State of California in and for the County of Santa Barbara in action number 2826, entitled "John S. Bell, plaintiff, vs. George Staacke, George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased, and Louis Jones, defendants," and in which Teresa Bell as administratrix of the estate of Thomas Bell, deceased, became and was a substituted party defendant in the place and stead of George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased; and that said relations between said parties plaintiff and defendant, their successors and assigns, and the determination of their respective rights, titles, interests, estates and claims were not fully, completely and finally or at all determined and adjudicated with respect to said real property in and by the decree entered in said action number 2826 in said Superior Court on July 9, 1901, and which decree was affirmed by the dismissal of the appeal of the defendants therefrom in the Supreme Court of California on September 16, 1902.

Second: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara and the Supreme Court of California, or either of them, had any further jurisdiction of said action number 2826, entitled as aforesaid, in said Superior Court on and after

the nineteenth day of July, 1901.

Third: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara had jurisdiction to hear and try defendants' motion for an order granting a new trial in said action number 2826, entitled as aforesaid in said Superior Court.

Fourth: That the Court erred in holding and deciding that the Supreme Court of California had jurisdiction of defendants' appeal from the order of the Superior Court of the State of California in and for the County of Santa Barbara made and entered on the seventh day of June, 1901, denying defendants' motion for a new trial in said action number 2826 entitled as aforesaid in said Superior Court.

Fifth: That the Court erred in holding and deciding that the Supreme Court of California had any jurisdiction of defendants' appeal from the order of the Superior Court of the State of California in and for the County of Santa Barbara made and entered on the seventh day of June, 1901, denying defendants' motion for a new trial in said action number 2826 entitled as aforesaid in said Superior Court, and had any jurisdiction to reverse said order denying said motion for a new trial and had any jurisdiction to remand said action to said Superior Court for a new trial.

Sixth: That the Court erred in holding and deciding that the order and judgment of the Supreme Court of the State of California ordering and granting a new trial as aforesaid gave and conferred any jurisdiction, power or authority to and upon the Superior Court of the State of California in and for the County of Santa Barbara to retry upon the merits or at all said action number 2826 entitled as aforesaid in said Superior Court, and also erred in holding and deciding that said order and judgment of said Supreme Court were, and each of them was, not null and void for want of jurisdiction.

Seventh: That the Court erred in holding and deciding that the judgment and decree made and rendered

on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court, upon the retrial of said action, was not, and all the proceedings, matters and things had and done upon the retrial thereof were not and each of them was not wholly null, void and of no force and effect for want of jurisdiction.

Eighth: That the Court erred in holding and deciding that the order of sale contained in said decree made on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court and the sale made thereunder of the real property described in paragraph one of complainant's Bill of Complaint herein are not and were not and each of them is not and was not wholly null, void and of no force and effect for want of jurisdiction.

Ninth: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara had any jurisdiction in any proceedings in said action number 2826 entitled as aforesaid in said Superior Court subsequent to the making and entry of said judgment, decree and order of sale upon the retrial of said action number 2826 as aforesaid, and in holding and deciding that any of such proceedings, orders and things had, made and done by Said Superior Court in said action subsequent to said judgment, decree and order of sale or in pursuance thereto or under the authority thereof were not and are not and each of them was not and is not wholly null, void and of no force and effect.

Tenth: That the Court erred in holding and deciding that the Supreme Court of the State of California had any jurisdiction to hear and determine any question or questions and to try and decide any issue or issues, either of law or of fact, raised by the appeals

from said judgment made on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court upon the retrial of said action, and from the order of said Superior Court made and entered on the twenty-fourth day of June, 1905, denying plaintiff's motion for a new trial, and that the Court erred in not holding and deciding that the decisions, judgments and decrees of said Supreme Court of California upon said appeals were wholly null, void and of no force and effect for want of jurisdiction.

Eleventh: That the Court erred in holding and deciding that the relations between the complainant herein on the one hand and the said George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, their successors and assigns on the other hand in connection with and the determination of their respective rights, titles, interests, estates and claims with reference to the real property described in paragraph one of complainant's Bill of Complaint herein were not fully, finally and completely or at all determined by the decision and decree made and entered in the Superior Court of the State of California in and for the County of Santa Barbara in action number 4424 entitled "Kate M. Bell and James L. Crittenden, plaintiffs, vs. San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco, a corporation, defendants, and U. S. Oil & Land Company, defendant to cross-complaint.

Twelfth: That the Court erred in holding and deciding that the decision and the judgment and decree made and entered on the fourteenth day of March, 1905,

in the Superior Court of the State of California in and for the County of Santa Barbara aforesaid in said action number 4424 entitled in said Superior Court as aforesaid were not the last final and controlling decision, judgment and decree upon and with respect to all allegations, matters and things therein in issue which were then in issue between the same parties or their successors in interest in action number 2826 in the Superior Court of the State of California in and for the County of Santa Barbara entitled "John S. Bell, plaintiff, vs. George Staacke, George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased," and Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and later as the administratrix of the estate of Thomas Bell, deceased, with the will annexed in place of George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased, and with reference to the determination of the rights, titles, interests, estates and claims, both in law and in equity, between John S. Bell and his grantees on the one hand, and said defendants George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed on the other hand, with respect to the real property described in paragraph one of complainant's Bill of Complaint and to all or any part thereof and which constituted the subject matter of both actions number 2826 and number 4424.

Thirteenth: That the Court erred in holding and deciding that Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed did not pay the indebtedness due the San Francisco Savings Union upon the note of George Staacke to said San Francisco Savings Union for sixty thousand dollars (\$60,000), the payment of which was guaranteed by the written contract of said Thomas Bell, deceased, endorsed upon said note and secured by deed of trust held by the Mercantile Trust Company as trustee and the successor of Henry C. Campbell, Thaddeus B. Kent and Edward B. Pond as trustees under the deed of trust

executed by George Staacke to said Henry C. Campbell and Thaddeus B. Kent of the property described in paragraph one of complainant's Bill of Complaint and of the 4,000-acre tract belonging to said Thomas Bell as a voluntary discharge of the liability of the estate of Thomas Bell to personally pay said indebtedness under its guaranty contract as aforesaid.

Fourteenth: That the Court erred in holding and deciding that said payment of said indebtedness by said Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, to said San Francisco Savings Union as aforesaid was made pursuant to and in satisfaction and discharge of the judgment and decree made on the fourteenth day of March, 1905, in the Superior Court of the State of California in and for the County of Santa Barbara in action number 4424 entitled as aforesaid in said Superior Court.

Fifteenth: That the Court erred in holding and deciding that the said Teresa Bell became and was the owner of any right, title, interest or estate belonging to John S. Bell or the grantees of John S. Bell, including the complainant herein, of, in or to the real property described in paragraph one of complainant's Bill of Complaint herein under and by virtue of the order of sale contained in the decree entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid and under and by virtue of the sale and the conveyance attempted to be made thereunder.

Sixteenth: That the Court erred in holding and deciding that said real property described in paragraph one of complainant's Bill of Complaint herein was sold and conveyed to Teresa Bell as administratrix of the estate of Thomas Bell, deceased with the will annexed under and by virtue of the deed of trust from George Staacke to Henry C. Campbell and Thaddeus B. Kent or assigns upon default in the payment of the indebtedness to the San Francisco Savings Union which it

was given to secure or in pursuance of any terms, conditions or directions for the sale of said real property in default of the payment of said indebtedness which were contained in said deed of trust.

Seventeenth: That the Court erred in holding and deciding that the reconveyance of the real property described in paragraph one of complainant's Bill of Complaint herein by the trustee of the San Francisco Savings Union to Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed upon the payment of the indebtedness due the San Francisco Savings Union from the estate of Thomas Bell, deceased, was made pursuant to any of the terms and directions for the execution of said trust deed contained in the decree of the Superior Court of the State of California in and for the County of Santa Barbara in said action number 4424 entitled as aforesaid and that said reconveyance of said real property as aforesaid was made in satisfaction of said judgment and decree in said action number 4424.

Eighteenth: That the Court erred in holding and deciding that the reconveyance from the Mercantile Trust Company, trustee as aforesaid of said real property described in paragraph one of complainant's Bill of Complaint herein, to Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed was not made to her as the successor of George Staacke in and to the trust of and concerning said real property for and on behalf of the grantees of John S. Bell, including the complainant herein, and as the involuntary trustee thereof under the terms and conditions and for the purposes found, stated and declared in the decision and findings of fact made and entered by the Superior Court of the State of California in and for the County of Santa Barbara in said action number 4424.

Nineteenth: That the Court erred in holding and deciding that Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and as the successor to and the involuntary trustee of

the trust created in George Staacke, as decided and found in and by the decisions and findings of fact made and entered in said action number 4424 in the Superior Court of the State of California in and for the County of Santa Barbara, entitled as aforesaid, with reference to the real property described in paragraph one of complainant's Bill of Complaint herein was not under the obligation of conveying said property to the grantees of John S. Bell, including the complainant herein, as their interests appeared by said decision and findings aforesaid.

Twentieth: That the Court erred in holding and deciding that Teresa Bell as administratrix and as such involuntary trustee of said real property described in paragraph one of complainant's Bill of Complaint was not under the obligation to account to said grantees of said John S. Bell and to the complainant herein, as their interests might appear, for the present value of said real property and for the rents, issues and profits accruing therefrom since the date of said reconveyance to her as such involuntary trustee by said Mercantile Trust Company as aforesaid, in the event said involuntary trustee had conveyed said real property to purchasers without notice and for value.

Twenty-first: That the Court erred in sustaining the defenses set up in the joint and several answers of Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, George Henry Howard, O. H. Harshbarger, George Henry Howard as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

Twenty-second: That the Court erred in sustaining the special defenses set up as pleas in the answer of the defendants W. P. Hammon and F. C. van Deirse.

Twenty-third: That the Court erred in holding and

deciding that a rehearing was granted by the Supreme Court of the State of California in bank in said action number 2826 in said Superior Court of the State of California in and for the County of Santa Barbara entitled as aforesaid.

Twenty-fourth: That the Court erred in holding and deciding that the order denying plaintiff's motion for a new trial was reversed and that a new trial was awarded by said Supreme Court of California in said action number 2826 entitled as aforesaid, for the reason that said Supreme Court had no jurisdiction of said order denying said motion for a new trial or of any appeal therefrom, and also for the reason that no notice of intention to move for a new trial had ever been given, served or filed therein as required by law, and also for the reason that no valid appeal had ever been taken from the judgment in said action number 2826 and that said judgment therein had become final, also for the reason that under the Constitution and laws of the State of California upon the affirmance of the judgment in said action number 2826 by the decision of said Supreme Court of the State of California dismissing the appeal from said judgment dated the sixteenth day of September, 1902, said judgment had become and was a final judgment at and after the expiration of thirty days thereafter, and no decision or order made by said Supreme Court on appeal from said order denying a new trial could vacate, set aside, modify or defeat said judgment or any of the provisions thereof.

Twenty-fifth: That the Court erred in holding and deciding that the deed executed by George Staacke to Catherine M. Bell and James L. Crittenden under and in pursuance to the judgment and decree dated the ninth day of July, 1901, in said action number 2826 was executed and deposited in the registry of the Superior Court of Santa Barbara County, California, in order to obtain a stay of execution, for the reason that there are no admitted facts in the record to sustain such finding and decision.

Twenty-sixth: That the Court erred in holding and

deciding that there was a new trial in said action number 2826 subsequent to the judgment and decree entered in said action on the ninth day of July, 1901.

Twenty-seventh: That the Court erred in holding and deciding that the real property described in paragraph one of complainant's Bill of Complaint herein was sold at an execution sale and that Teresa Bell became the purchaser thereof at such sale and that such purchaser in due course received a deed to said real property from the commissioner who conducted said sale.

Twenty-eighth: That the Court erred in holding and deciding that the decree made and entered on the ninth day of July, 1901, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid was vacated by the Supreme Court of the State of California.

Twenty-ninth: That the Court erred in holding and deciding that another and different decree from that entered on July 9th, 1901, was thereafter made and entered in the Superior Court of the State of California in and for the County of Santa Barbara upon a retrial of said action number 2826 and that the same was later affirmed by the Supreme Court of the State of California.

Thirtieth: That the Court erred in holding and deciding that in and by the decree and judicial sale made under said decree entered upon said retrial of said action number 2826 every right, title and interest of John S. Bell and his successors in interest in and to the real property described in paragraph one of the Bill became vested in the purchaser, said Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed at said sale under the commissioner's deed.

Thirty-first: That the Court erred in holding and deciding that whether the Supreme Court of the State of California had jurisdiction to award a new trial in said action number 2826 after dismissing an appeal

from a final judgment depended solely and exclusively upon the Constitution and laws of the State of California.

Thirty-second: That the Court erred in holding and deciding that the title of the complainant herein and to the real property described in paragraph one of its Bill of Complaint did not depend solely and exclusively upon the Constitution and laws of the State of California and upon the decisions of the Supreme Court of California determining and settling the jurisdiction of said Supreme Court to hear, try and determine questions affecting the title to said real property in force and effect at the time when complainant purchased the same.

Thirty-third: That the Court erred in holding and deciding that in equity complainant could not claim under and by virtue of the judgment and decree entered in said action number 2826 on the ninth day of July, 1901, and under the judgment and decree entered in said action number 4424 at one and the same time.

Thirty-fourth: That the Court erred in holding and deciding that complainant's Bill of Complaint herein was without equity.

Thirty-fifth: That the Court erred in holding and deciding that complainant's Bill of Complaint herein should be dismissed and in dismissing the same.

Thirty-sixth: That the Court erred in sustaining the said special defenses of the several defendants to the Bill of Complaint for the following and each of the following reasons, to-wit: (1) That the complainant was and is entitled to a judgment and decree as prayed for in its Bill upon the facts and matters alleged in said Bill and admitted by the several answers of the several defendants or confessed to be true by said defendants by their omission and failure to deny the allegations and statements of fact and matters contained in said Bill; (2) that upon the facts and matters set forth and alleged and admitted and confessed by the defendants to be true the said Bill of Complaint was meritorious and the complainant was entitled to have a trial on the merits; (3) that it was admitted and confessed in and

by the several answers of each and all of the defendants that the judgment and decree rendered and entered in said action number 2826 entitled as aforesaid in the Superior Court of the State of California in and for the County of Santa Barbara on the ninth day of July, 1901, was final and that no appeal from said judgment of said Superior Court last mentioned was taken within the time required by law and that no notice of intention to move for a new trial was given, served or filed within the time required and limited by law; (4) that it appears by and from the facts and matters alleged in said Bill and admitted or confessed to be true in and by all of the defendants in their several answers that the said Superior Court of the State of California in and for the County of Santa Barbara and the said Supreme Court of the State of California and each of them had no jurisdiction whatever after the nineteenth day of July, 1901, to modify, change or reverse said judgment and decree entered on the ninth day of July, 1901, or to set aside any order theretofore made denying a new trial in said action, or to grant a new trial in said action, or to try or retry said action; (5) that it is and was admitted and confessed in and by the several answers of all of the defendants that the judgment and decree rendered and entered in said action number 4424 in and by said Superior Court of the State of California in and for the County of Santa Barbara was final and conclusive and binding upon each and all of the parties plaintiff and defendant therein and thereto and upon all of the defendants in and to this suit; (6) that each, every and all of the rights, titles, interests and claims of each and all of the parties to said action number 2826 was and were finally adjudicated, and determined in and by the judgment and decree in said action number 4424 and were not and could not be changed, altered or affected by any judgment or decree in said action number 2826 as no judgment or decree in said action number 2826 was pleaded in bar or otherwise or at all by any of the parties to said action number 2826; (7) that there is no provision or statement in the judgment and decree in said action number 4424 mentioning or referring to

or exempting or excepting the judgment and decree in said action number 2826 from said judgment and decree in said action number 4424 or from any of the provisions thereof or from the force or effect thereof; (8) that by and under the judgment and decree in said action number 4424 the 10,000-acre tract described in paragraph one of said Bill should be sold at public auction in the manner prescribed in and by said decree and that the sale thereof should be subject to confirmation and that the proceeds of the sale thereof should be applied only so far as necessary to pay the indebtedness adjudged therein to be due to the San Francisco Savings Union and the balance paid over to George Staacke, his heirs or assigns, the said George Staacke having been, in and by said findings and decision of said Superior Court in action number 4424 entitled as aforesaid, adjudged to have been trustee of said 10,000-acre tract for said John S. Bell and his successors in interest; (9) that the right, if any existed, on the part of the defendants or any of the defendants in and to said action number 2826 to claim or assert against the complainant in this suit any benefit or advantage by reason of or under any judgment or decree rendered in said action number 2826 was forever lost and barred by reason of their failure and neglect to plead said judgment in bar or as *res adjudicata* in said action number 4424; (10) that it is admitted and confessed in and by the several answers of the several defendants; (a) that the complainant is a citizen of the State of Arizona and all of the defendants are citizens of the State of California; (b) that each of said defendants claims and asserts an estate or interest in said 10,000-acre tract, piece and parcel of land adverse to the complainant; (c) that on the twenty-ninth day of June, 1901, a judgment and decree was duly made, rendered and filed in and by said Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 in favor of the plaintiff in said action—and was thereafter duly entered on the ninth day of July, 1901, and was in the words and figures set forth in paragraph

seven of said Bill—that the appeal thereafter taken from said judgment was dismissed by the Supreme Court of the State of California for want of jurisdiction—that findings of fact and conclusions of law were filed in said action number 2826 on the sixth day of March, 1901, and thereafter on the seventh day of June, 1901, additional findings of fact and conclusions of law were made, signed and filed by the Judge of said Superior Court of Santa Barbara County and by said Superior Court in said action number 2826—that no motion for a new trial and no notice of intention to move for a new trial in said action number 2826 was made, given, served or filed on or after the seventh day of June, 1901—that it was declared and provided in and by the laws of the State of California and in and by section 659 of the Code of Civil Procedure of California from the first day of July, 1874, until the twentieth day of May, 1907, that “the party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions or a statement of the case”—that each and all of the defendants and attorneys for the defendants in said action number 2826 had notice and well knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the times and as in complainant’s Bill alleged and shown—that it is provided and declared in and by section 955 of said Code of Civil Procedure of California that “the dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal,” and that said provision of said section 955 has been in full force and effect since 1872—that said appeal taken

by the defendants from said judgment in said action number 2826 when dismissed by the Supreme Court was not so dismissed without prejudice to another or any other appeal and was duly made and rendered in bank in and by said Supreme Court of the State of California on the sixteenth day of September, 1902—that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are in the words and figures set forth in paragraph eight of complainant's Bill of Complaint—that on the eighteenth day of September, 1902, an undivided one-half of, in and to said tract, piece and parcel of land of 10,000 and 2-10 acres, the property described in paragraph one of complainant's Bill, was sold, granted, transferred and conveyed in fee simple for a valuable consideration to complainant herein by James L. Crittenden and Nina D. Crittenden, his wife, and by a good and sufficient deed signed and acknowledged by them, which said deed was thereafter duly recorded on the twenty-sixth day of September, 1902, in the office of the County Recorder of Santa Barbara County, State of California—(d) that it was well settled in and by many decisions of the Supreme Court of the State of California, both in department and in bank, on and prior to the eighteenth and twenty-sixth days of September, 1902, that the right to move for a new trial was lost and terminated upon the expiration of ten days after the party against whom the decision was rendered had notice or knowledge of the decision and also that any notice of intention to move for a new trial made, given, served and filed before the last findings of fact and conclusions of law were made and filed by the Court was premature and ineffective for any purpose and that the Court had no jurisdiction, power or authority by reason of any such notice and must deny the motion, and that the Supreme Court did not have any jurisdiction, power or authority on any appeal from any order denying such motion to review or set aside the decision of the Court made on such motion or the order denying such motion, and had no jurisdiction, power or authority to reverse such or-

der or grant a new trial; (e) that the complainant was not a party in or to said action number 2826 and was made a party to said action number 4424 by a cross-complaint filed by said defendants therein, and that in said action number 4424 all of the rights, titles, interests and claims of each and all of the parties in and to said action number 2826 were raised and involved and tried as issues in said action number 4424 and on the trial thereof and were and are included in and adjudicated by the findings of fact, judgment and decree rendered in said action number 4424, which said judgment and decree became and is final and conclusive upon all of the parties to each of said actions.

Thirty-seventh: That the Court erred in dismissing the Bill herein on the ground said Bill was without equity, for the reason that complainant was and is entitled to a decree as prayed for in its Bill and also for the reason that the facts and matters alleged in said Bill and admitted and confessed by the several answers of said defendants entitled the complainant to a decree as prayed for in its Bill, and also for each of the reasons hereinabove in the thirty-sixth assignment of error stated, the same being hereby referred to and made a part of this assignment of error.

Thirty-eighth: That the Court erred in holding and deciding in and by its decree that at the hearing it was admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California in and for the County of Santa Barbara and of the Superior Court of the State of California in and for the City and County of San Francisco were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. van Deinse, whereas it was not so stipulated and agreed by the complainant or by the solicitors or counsel for com-

plainant or by any of them and the minutes of said Court do not show any such stipulation, and whereas the only admission and stipulation on said hearing was made by both the complainant and the defendants and merely stipulated and admitted that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara and the Superior Court of the State of California in and for the City and County of San Francisco were substantially correct copies thereof.

Thirty-ninth: That the Court erred in not holding and finding in and by said decree that at the hearing it was admitted and stipulated by the complainant and the defendants that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara and the Superior Court of the State of California in and for the City and County of San Francisco were substantially correct copies thereof.

Wherefore, complainant prays that the decree of the District Court of the United States for the District of Southern California, Southern Division, be reversed.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

Dated at San Francisco, this — day of January, 1914.

(Endorsed.) Assignment of Errors. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Petition for Appeal.

The above-named complainant and appellant, conceiving itself aggrieved by the decree made and entered on

the seventeenth day of July, 1913, and entered and recorded on the twenty-first day of July, 1913, and modified by an order and decree made and rendered and ordered entered nunc pro tunc as of July 21, 1913, on the eighth day of December, 1913, in the above-entitled cause, does hereby appeal from said decree so made, rendered, entered and modified as aforesaid and from every part thereof to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which such decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

The foregoing claim of appeal is allowed, bond to be given in sum of \$500.

Erskine M. Ross, Circuit Judge.

Dated at Los Angeles this 14th day of January, 1914.

(Endorsed.) No. 140 Civil. In Equity. Petition for Appeal and Order Allowing. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Know all men by these presents: That we, U. S. Oil & Land Company, a corporation, as principal, and Equitable Surety Company, a corporation, organized and existing under the laws of the State of Missouri, and authorized to do business in the State of California, as sureties, are held and firmly bound unto Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele

Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais and P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company, Catherine M. Bell, also known as Kate M. Bell, in the full and just sum of Five Hundred (500) dollars, to be paid to the said Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keys, Thomas N. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell, W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of January, in the year of our Lord One Thousand Nine Hundred and Fourteen.

Whereas, lately at a District Court of the United States, for the Southern District of California, Southern Division, in a suit depending in said Court, between U. S. Oil & Land Company, a corporation, as complainant and Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vell-

guth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auze-rais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, et al., as defendants, a decree of dismissal was rendered against the said U. S. Oil & Land Company and the said U. S. Oil & Land Company having obtained from said Court allowance of an appeal to reverse the decree in the afore-said suit, and a citation directed to the said defendants, Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harsh-barger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Com-pany, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Fran-cisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auze-rais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, citing and admonish-ing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California

Now, the condition of the above obligation is such that if the said U. S. Oil & Land Company shall prose-cute its appeal from said decree to effect, and answer all costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

U. S. Oil & Land Company,

By James L. Crittenden, President.
 (Corporate Seal) A. D. Crittenden, Secretary.
 (Seal)
 Equitable Surety Company, (Seal)
 By A. B. Reddie,
 (Seal)
 Attorney-in-fact.
 (Corporate Seal)

The foregoing bond is approved this January 14, 1914.

Ross, Circuit Judge.

(Endorsed.) No. 140. In Equity. Bond on Appeal. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk.
 By Chas. N. Williams, Deputy Clerk.

Title of Court and Cause. No. 140 Civil. In Equity.
 To the Clerk of said Court—Sir:

Please issue certified transcript of the record in the above entitled suit in equity to the United States Circuit Court of Appeals for the Ninth Circuit, to consist of Bill of Complaint, Subpoena and Alias Subpoenas, Joint and Several Demurrers of Defendant Teresa Bell, etc., et al., Joint and Several Answer of the Defendant Teresa Bell, etc., et al., the Joint and Several Demurrers of the Defendants Thomas Frederick Bell, et al., the Joint and Several Answer of the Defendants Thomas Frederick Bell, et al., Joint and Several Demurrers of the Defendants W. P. Hammon and F. C. Van Deinse, the Replications of Complainant to the Answers aforesaid, the Answer of the Defendant Associated Oil Company, the Demurrer of the Defendant Union Oil Company, the Order Overruling the last mentioned Demurrer, the Plea in Abatement of the Defendant Union Oil Company, the Joint and Several Plea and Answer of Defendants W. P. Hammon and F. C. Van Deinse, the Replication of complainant to the last mentioned Answer, the Order Overruling the Joint and Several Pleas and Motion for Judgment of Defendant W. P. Hammon and F. C. Van Deinse, the Order Denying Motion of Defendants Teresa Bell, etc., et al., for Judgment on Pleadings and assigning said defendants to answer the

bill and continuing said cause to be heard separately on question of certain judgments in the state courts, the Joint and Several Answer of Defendants W. P. Hammon and F. C. Van Deinse, the Decree of Dismissal, the Opinion and Decision thereon, Complainant's Notice of Motion for Order Modifying Said Decree of Dismissal, and Affidavit of James L. Crittenden on said Motion, Affidavit of Service of said Motion, omitting the Notice of Motion, the Affidavits of Chauncey S. Goodrich, Peter Crosby and T. Z. Blakeman in Opposition to Modify Decree of Dismissal, Copies of the Minute Orders in said Suit of March 10, 19, and 20, 1913, Order Modifying said Decree of Dismissal, Petition for Appeal, Assignment of Errors, Bond on Appeal, Citation, praecipe for Transcript.

In the preparation of the foregoing transcript care to be taken to comply with Rule 76 of Rules of Practice for the Courts of Equity of the United States.

Respectfully yours,

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

Service of within praecipe for a transcript on appeal by receipt of a copy is hereby admitted this 15th day of January, 1914.

Charles W. Slack, Chauncey S. Goodrich,
Solicitors for W. P. Hammon and F. C. Van Deinse.

Edmund Tauszky,
Solicitor for Associated Oil Co.

- Due service of the within praecipe for a transcript on appeal by receipt of a copy thereof, is hereby admitted this 14th day of January, 1914.

Lewis W. Andrews, Thomas O. Toland,
Solicitor for defendant Union Oil Company.

Sullivan, Sullivan & Theo. J. Roche,
Solicitor for Catherine M. Bell.

United States of America, ss.

On this 16th day of January in the year of our Lord one thousand nine hundred and fourteen, personally

appeared before me Paul P. O'Brien, Deputy Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the subscriber, Jacob M. Blake, and makes oath that he delivered a true copy of the within Praeceptum for Transcript on Appeal to T. Z. Blakeman, solicitor for the defendants, Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell; and to Peter J. Crosby, solicitor for the defendants, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerai, Peter J. Crosby; and to Chauncey S. Goodrich, one of the solicitors for the defendants W. P. Hammon and F. C. Van Deinse; and to Edmund Tauszky, solicitor for the defendant Associated Oil Company; and to Theo. J. Roche, one of the solicitors for the defendant Catherine M. Bell, also known as Kate M. Bell, and to each of them, at San Francisco, California, on the fifteenth day of January, 1914.

Jacob M. Blake.

Subscribed and sworn to before me at San Francisco, California, this 16th day of January, A. D. 1914.

(Seal)

Paul P. O'Brien,

Deputy Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

(Endorsed.) Praeceptum for Transcript on Appeal and Affidavit of Service. Filed Jan. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Praeceptum for Incorporation of Additional Portions of
the Record Into the Transcript on Com-
plainant's Appeal.

To Wm. M. Van Dyke, Esq.,

Clerk of the above entitled District Court of the
United States:

You are hereby notified that the defendants and appellees W. P. Hammon and F. C. Van Deinse, in the above entitled proceeding in equity, desire the following additional portions of the record in such proceeding incorporated into the transcript of such record ordered, and to be used, by the complainant on its appeal herein, viz.: (a) The order overruling the joint and several demurrers of the said defendants W. P. Hammon and F. C. Van Deinse; (b) the opinion and decision on the said demurrers and on the demurrers of other defendants; (c) the joint and several motion of the said defendants W. P. Hammon and F. C. Van Deinse for judgment on plea and replication; (d) the affidavit in reply of James L. Crittenden on motion for modification of decree; (e) the minute order made by the Court in the said proceeding on the 8th day of December, 1913, and (f) this praecipe for additional portions of the record.

And you are hereby requested to cause the said portions of the record to be incorporated in the said transcript.

Dated this 17th day of January, 1914.

Yours, etc.,

Charles W. Slack and
Chauncey S. Goodrich,

Solicitors for the said defendants, W. P. Hammon and
F. C. Van Deinse.

Service of the within praecipe and of a copy thereof
is hereby admitted this 18th day of January, 1914.

Richards & Carrier and
James L. Crittenden,

Solicitors for Complainant and Appellant.

By Jacob M. Blake, of Counsel.

(Endorsed.) No. 140 Civil. Praecipe for Incorporation of Additional Portions of the Record into the Transcript on Complainant's Appeal. Filed Jan. 20, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

No. 140 Civil. In Equity.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing four hundred and eighty-nine (489) typewritten pages, numbered from 1 to 489 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Subpoena, Alias Subpoena, Joint and Several Demurrer of Defendants Teresa Bell, etc., et al., Joint and Several Answer of Defendants Teresa Bell, etc., et al., Joint and Several Demurrer of Defendants Thomas Frederick Bell, et al., Joint and Several Answer of Defendants Thomas Frederick Bell, et al., Joint and Several Demurrer of Defendants W. P. Hammon and F. C. Van Deinse, Replication to the Answer of Defendants Teresa Bell, etc., et al., Replication to the Answer of Defendants Thomas Frederick Bell, et al., Answer of Defendant Associated Oil Company, Demurrer of Defendant Union Oil Company of California, Opinion on Demurrers, Order Overruling Demurrers, Plea in Abatement of Defendant Union Oil Company of California, Joint and Several Plea and Answer Fortifying Plea of Defendants W. P. Hammon and F. C. Van Deinse, Replication to Answer of Defendants W. P. Hammon and F. C. Van Deinse, Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deinse for Judgment on Plea and Replication, Order Denying Motion for Judgment on the Pleadings, Order Denying Motion for Hearing on the Pleas and Answers of Defendants Teresa Bell, et al., Joint and Several Answer of Defendants W. P. Hammon and F. C. Van Deinse, Order of March 19, 1913, con-

tinuing hearing on special defenses, Order of March 20, 1913, continuing hearing on special defenses to 2 p. m. of that day, Order directing submission of cause on special defenses, Opinion and Decision, Decree, Notice of Motion for Modification of Decree and Affidavit of James L. Crittenden, Affidavit of Service of Notice of Motion for Modification of Decree and Affidavit of James L. Crittenden, Affidavit of T. Z. Blakeman in Opposition to Motion to Modify Decree; Affidavit of Peter J. Crosby in Opposition to Motion to Modify Decree, Affidavit of Chauncey S. Goodrich in Opposition to Motion to Modify Decree, Affidavit in Reply of James L. Crittenden on Motion for Modification of Decree, Modification of Decree, Order of December 8, 1913, Assignment of Errors, Petition for Appeal and Order Allowing Appeal, Bond on Appeal, Praecipe of Appellant for Transcript on Appeal and Affidavit of Service thereof, and Praecipe of Appellees for Incorporation of Additional Portions of the Record into Transcript on Appeal in the above and therein entitled cause, and that the same together constitute the record in said cause on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as specified in the Praecipies filed in my office on behalf of the appellants and appellees by their attorneys of record.

I do further certify that the cost of the foregoing record is \$274 25-100, the amount whereof has been paid me by the U. S. Oil & Land Company, a corporation, the complainant and appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 3rd day of April, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence, the one hundred and thirty-eighth.

(Seal of said U. S. District Court.)

Wm. M. Van Dyke,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

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No. 2415.

**United States Circuit Court
of Appeals,
For the Ninth Circuit.**

U. S. OIL & LAND COMPANY, a corporation,

Appellant,

vs.

TERESA BELL as Administratrix of the
Estate of Thomas Bell, Deceased, with
the Will annexed, et al.,

Appellees.

BRIEF FOR APPELLANT

RICHARDS & CARRIER,
JAMES L. CRITTENDEN,

Solicitors for Appellant

Filed

JACOB M. BLAKE,

Of Counsel.

SEP 26 1914

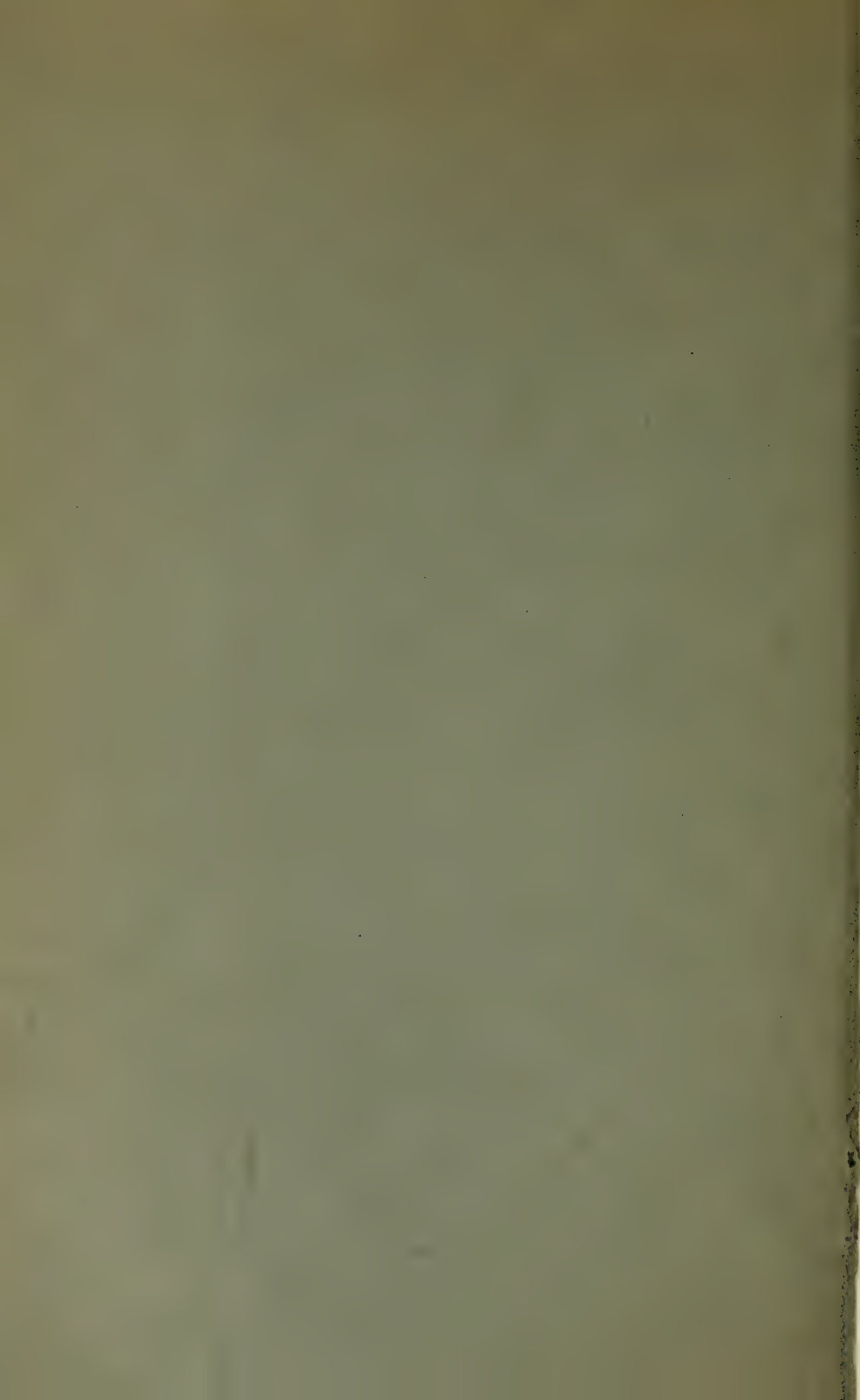
F. D. Monckton,

Filed

Clerk.

By

Deputy



No. 2415.

United States Circuit Court of Appeals,

For the Ninth Circuit.

U. S. OIL & LAND COMPANY, a corporation,

Appellant,

vs.

TERESA BELL as Administratrix of the
Estate of Thomas Bell, Deceased, with
the Will annexed, et al.,

Appellees.

BRIEF FOR APPELLANT

This suit is to quiet title to an undivided one-half ($\frac{1}{2}$) interest in and to 10,067.2 acres of land in Santa Barbara County California, and for other relief in Equity.

The District Court, Judge Rudkin presiding, after hearing and overruling all of several demurrers interposed by the defendants, after argument (Tr. p. 176),—after denying the motion of the defendants Hammon

and Van Deinse for judgment on the pleadings based on their joint and several pleas and answer fortifying said pleas and the Bill (Tr. p. 226),—and after denying a motion for hearing on the pleas and answer of defendants Teresa Bell et al. (Tr. p. 227), ordered that certain defendants be assigned to answer the Bill of Complaint and that the cause be continued until March 19th, 1913, “*to be heard separately on the question of certain judgments in the State courts*, providing said answers shall have been filed theretofore” (Tr. p. 227).

The Court held, on overruling said demurrers (Tr. p. 175), that the complainant had no adequate remedy at law in the Courts of the United States, also that the claim in suit was not stale, also that the complainant had not been guilty of laches, also that the suit was brought within the period limited by the statute of limitations of the State of California and that there was nothing on the face of the Bill to warrant the Court in curtailing the statutory period or in refusing to apply the analogy of the State statute, *and also that the Bill did state a case entitling the complainant to equitable relief*, stating “I am of opinion that the grounds of the demurrer are either not well taken or are not apparent on the face of the Bill” (Tr. p. 175).

The hearing separately on the sole question of certain judgments in the State courts mentioned in the Bill and the answers of certain defendants, in pursuance of the order of the Court above-mentioned, was had on March 20th, 1913 (Tr. pp. 289-291), and the Court thereafter on the 8th day of July, 1913, made and filed its opinion on said hearing (Tr. pp. 291-296), and thereafter on July 17th, 1913, made and filed an order and decree, which had been prepared by solicitors for defendants without being seen by any of the solicitors or counsel for complainant, wherein and whereby, after certain recitals, it was “ordered, adjudged and decreed that the Bill of Complaint herein be and the same is hereby dismissed, and that the above-named defendants do have and recover from the complainant their costs herein taxed at \$.....”

The said decree was thereafter entered and recorded July 21st, 1913 (Tr. pp. 296-297), and was thereafter on December 8th 1913, modified by an order and decree of the court (Tr. p. 323) by inserting in the recitals thereof the words and sentences "but the complainant did not stipulate or admit that such judgments or decrees were valid or binding or that the said several courts had jurisdiction to render or enter the same." This correction of the decree was made on hearing of a motion made by complainant to correct said decree (Tr. pp. 297-300), but the Court failed to make the full correction applied for by the motion and to which complainant claimed and still claims it was entitled.

The Court in and by its opinion and decision (Tr. pp. 291-296) *held that the Bill was "without equity and should be dismissed,"* and directed a decree to be entered accordingly. This appeal is from said decree of dismissal filed on July 21st. 1913. (Tr. p. 297.)

The appeal was allowed upon petition of complainant, and bond in sum of \$500 on appeal fixed, executed, approved and filed all on the fourteenth day of January, 1914 (Tr. pp. 241-345). Praecepto to the Clerk of the District Court for a transcript on appeal was served upon all of the solicitors for the several appellees on the fourteenth and fifteenth days of January, 1914 (Tr. pp. 345-347). Three copies of transcript were served on the 4th and 5th of August 1914 upon each of the several solicitors for appellees and receipt thereof admitted (see admissions on transcript).

The appellant contends and insists on this appeal that the Court erred in its decision and in making said decree, and that it clearly appears in and by the Bill and the facts admitted by the pleadings that the appellant was and is entitled to equitable relief—entitled to have its title quieted to an undivided one-half of the 10,067.2 acres of land described in the Bill and to the other relief prayed for in its Bill. The Judge seems to have utterly ignored many of the material facts alleged in the Bill and admitted or not denied by any of

the answers, also the well-settled principles and rules of the law applicable to such admitted or undenied facts and allegations; he seems never to have fully understood or grasped either the issues of fact or the issues of law as made and presented by the Bill and answers or the authorities submitted to him on the hearing. This will more fully appear by the statement of the case and the points and authorities hereinafter presented.

STATEMENT OF THE CASE.

The land involved in this suit is 10,067.2 acres situate in Santa Barbara County California, and fully described in the Bill, appellant claiming and asserting title in fee and ownership of an undivided one-half thereof and alleging fully and particularly the execution and recording of the several deeds and conveyances for valuable considerations by and under which it acquired title in fee thereto (Tr. pp. 6, 85-87). The deed and conveyance of the undivided one-half of said tract was made and executed to appellant by James L. Crittenden and Nina D. Crittenden, his wife, on the eighteenth day of September, 1902, and recorded on the twenty-sixth day of September, 1902 (Tr. p. 67), and thereafter another deed and conveyance was executed to appellant on the third day of March, 1911, by the San Luis Land and Improvement Company, for a valuable consideration, and thereafter recorded on March 5th, 1911 (Tr. pp. 85-86). The chain of title from John S. Bell to said James L. Crittenden by sales, deeds and conveyances for valuable considerations is fully and clearly alleged in the Bill (Tr. pp. 85-87).

The only question before the Court as limited by its order (Tr. p. 227) being "certain judgments in the State courts," the real merits and equities of the Bill were not heard or tried. and could not be and were not properly or fairly decided, yet the Court held and decreed that the Bill was without merit and dismissed the suit. It becomes necessary, therefore, to present

fully the case upon the merits as presented by the Bill, most of its averments being admitted or not denied by the answers of all of the defendants. The sufficiency of the Bill could only be considered or decided by giving the fullest weight and effect to each, every and all of its averments, allegations and statements and by assuming them to be absolutely true. Conscience and fairness demanded this and Courts of Equity have always so acted.

The answer of defendants Hammon and Van Deinse, with great fairness, admits directly, or states that they are without knowledge as to the most of the facts alleged in the Bill, and will be found upon examination to have denied only the charges of fraud, fraudulent intents, wrongful and unlawful conduct, the sufficiency of the deeds to transfer title to appellant and its grantors, and that the appellant is the owner in fee or otherwise of an undivided one-half or any part of said 10,067.2 acres tract of land; they admit and allege by their answer that they claim title to 2,100 acres of said tract, under deeds executed in 1911 and 1912 describing the portion claimed by them and that they had notice of all matters of record "and in said divers court proceedings" (Tr. pp. 258-261, 288); they deny the effect and conclusiveness of the decrees and findings in the suits of *Bell v. Staacke* and *Bell v. The San Francisco Savings Union*, as alleged in the Bill. We claim and contend that appellant was entitled to judgment upon the Bill and the answer of Harmon and Van Deinse and would have obtained a decree upon a trial on the merits against then and all of the defendants.

Some of the defendants in their answers set up a special defense of a pretended second judgment in *Bell v. Staacke*, and a pretended or purported sale thereunder which were void for want of jurisdiction.

The Bill shows and states: The diverse citizenship of the complainant and the defendants; the incorporation of the complainant under the laws of Arizona and the incorporation of the several corpora-

tion defendants under the laws of the State of California; the death of Thomas Bell in October, 1892, the probate of his will and proceedings therein resulting finally in the appointment and qualification of Teresa Bell as administratrix of the estate, with the will annexed; that the complainant is the owner in fee simple absolute of an undivided one-half of all that certain tract, piece and parcel of land situate, lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres (describing the same at length); that the defendants and each of them claim and assert an estate or interest adverse to complainant in said tract of land, that such claims are wrongful and unlawful and without any right whatever, and that the defendants have no right, title, estate or interest whatever in or to the undivided one-half thereof of which complainant is owner.

In 1887, August 23rd, John S. Bell and his uncle, Thomas Bell, joined in a sale and conveyance to Dwight W. Grover of two tracts of land in Sanat Barbara County, one of 10,067.2 acres owned by said John S. Bell and the other of 4000 acres owned by said Thomas Bell, for \$350,000, \$70,000 cash, and the balance in notes of Grover secured by two mortgages, one for \$216,000 on said 10,067.2 acres, and the other for \$54,000 secured by a mortgage on the 4,000 acre tract. All the notes and mortgages were made and executed to Thomas Bell. The purchase price of the 10,067.2 acres being \$270,000 and that of the 4,000 acres \$80,000.

On August 27th, 1887, said Thomas and John S. Bell made and executed a written agreement in regard to said sale (Tr. pp. 233-234), stating that said sale of said two tracts of land was made for \$350,000,—that Thomas Bell owned the said 4,000 acres and John S. Bell the said 10,067.2 acres,—that the former was sold for \$80,000 and the latter (10.067.2 acres) for \$270,000, that the cash payment of \$70,000 was received by said Thomas Bell, except \$600 paid to John S. Bell, that on an accounting had between said Thomas Bell and

John S. Bell said John S. Bell was indebted to said Thomas Bell \$25,529.05, that it was agreed between said Thomas Bell and John S. Bell that said Thomas Bell should hold the said notes and mortgage on said John S. Bell's land as security until he was repaid all present and any future loans and advances with interest and then "on demand assign the same to said John S. Bell."

On August 25th 1887 said Grover sold and conveyed to Samuel Rosener an undivided three-fifths of said two tracts.

On March 7 1889 Grover and Rosener, being unable to pay the interest or balance of the purchase price, conveyed to George Staacke all of said lands except such as had been sold by them and also transferred and delivered to Thomas Bell all notes and mortgages taken by them for deferred payments on portions of said tracts that had been sold by them and did so upon a release of all claims against them and the surrender and transfer to them of all of said notes and said two mortgages under and in pursuance of an agreement between them and said John S. Bell and Thomas Bell. George Staacke paid nothing to anyone for said lands or for or on account of said conveyance by Grover and Rosener of the same to him.

The agreement between said John S. Bell and Thomas Bell and said Grover and Rosener under which said conveyance was made to Staacke was found and adjudged by Judge Day in the decree in *Bell v. Staacke et al.*, which we say was final, and was that it should be so conveyed by Staacke to Grover and Rosener for the sole purpose of conveying and to convey to John S. Bell said 10,067.2 acres and to said Thomas Bell said 4,000 acres (Tr. pp. 14-15), but Taggart, Judge of the same court, in the later suit of *Kate M. Bell et al. v. San Francisco Savings Union et al.*, held (Tr. p. 236) that said agreement as to said conveyance to Staacke was that the 10,067.2 acres should be held by him as security for the payment of any money due from John S. Bell

to Thomas Bell and after the payment of such indebtedness "*to convey to the said John S. Bell the said tract of land or all that remained thereof after the payment of all sums then due to said Thomas Bell by said John S. Bell and all advances and loans thereafter made by said Thomas Bell to said John S. Bell.*"

In 1893 a suit was brought by John S. Bell in the Superior Court of Santa Barbara county against George Staacke individually, the executors of the estate of Thomas Bell (who had died in 1889) and Louis Jones, then in possession of said 10,067.2 acres, to quiet title to the same, to compel Staacke to execute a good and sufficient conveyance to John S. Bell and for other relief. Staacke had claimed and asserted that he held the title to said tract to secure payment of money alleged to be due Thomas Bell from John S. Bell at the time of the death of Thomas Bell.

On March 6th 1901 the Judge of said Superior Court made and filed certain Findings of Fact and Conclusions of Law in said suit of *Bell v. Staacke* in favor of Kate M. Bell and James L. Crittenden, the successors in interest of John S. Bell, which are set forth at length on pages 22-34 of the Transcript.

On June 7th 1901 Judge Day of said Superior Court made and filed *additional* Findings of Fact and Conclusions of Law, in said action of *Bell v. Staacke et al.*

On June 29th 1901 a decree in favor of said Kate M. Bell and James L. Crittenden was made and entered in and by said Court, a copy of which is set forth at length in the transcript pages 12-17. *No notice of intention to move for a new trial was ever made, given, served or filed on or after June 7th 1901* (alleged in the Bill, Tr. p. 18 and admitted by Hammon and Van Deinse, Tr. pp. 263-264, and not denied by any of the defendants).

The only appeals taken by any defendants from the said judgment of June 29th 1901 were dismissed for want of jurisdiction (Tr. p. 18) (not denied by any of the defendants except Hammon and Van Deinse, who

merely deny that it was dismissed "for want of jurisdiction").

The only parties to said suit of *Bell v. Staacke* No. 2826 in said Superior Court were John S. Bell, plaintiff, his successors in interest, Kate M. Bell and James L. Crittenden, and defendants George Staacke, Louis Jones, George Staacke and J. W. C. Maxwell as executors of the estate of Thomas Bell, deceased, and Teresa Bell as special administratrix and also as administratrix with the will annexed of said estate of Thomas Bell.

In 1898 Kate M. Bell and James L. Crittenden as plaintiffs commenced suit (No. 4424) in said Superior Court of Santa Barbara county to quiet title to said 10,067.2 acres and for other relief against the San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustice Bell, Teresa Bell as guardian of the persons and estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard Roe, Jane Doe, Mary Roe, and Mercantile Trust Company of San Francisco, defendants (Tr. p. 39). Thereafter defendants The San Francisco Savings Union, The Mercantile Trust Company and Teresa Bell as such administratrix by cross-complaint made the U. S. Oil & Land Company a defendant to their cross-complaints in said suit, the said U. S. Oil & Land Company having become the purchaser and owner of an undivided one-half of said 10,067.2 acre tract by sale and deed to it made and executed by said James L. Crittenden and his wife on the 18th day of September 1902, which said deed was duly recorded on the 26th day of September 1902 (Tr. p. 37). The U. S. Oil & Land Company was never at any time made a party to said suit of *Bell v. Staacke*.

On the 14th day of March 1905 Findings were filed by the court in said suit of *Kate M. Bell and James L.*

Crittenden v. San Francisco Savings Union et al., No. 4424, a copy of which is set forth in the Bill (Tr. pp. 73-81).

None of the defendants in said suit of *Kate M. Bell and James L. Crittenden v. San Francisco Savings Union et al.*, No., 4424, pleaded or set up by abatement or in any manner whatever any Findings, Judgment or Decree or any proceeding or proceedings had or made or purported to have been had or made in said suit of *Bell v. Staacke et al.*, and the only reference made in the findings or judgment in said suit of *Kate M. Bell and James L. Crittenden v. San Francisco Savings Union et al.*, No. 4424, is a statement that said suit of *Bell v. Staacke et al.*, "*is still pending in this Court . . . and the relations between said John S. Bell and his grantees of said first above described (10,067.2 acres) of said two several tracts of land on the one hand and said defendants George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed on the other hand in respect to said indebtedness of John S. Bell to said Thomas Bell and in respect to said first above described of said two several tracts of land and all or any parts thereof are involved in said action and constitute the subject-matter thereof and are in course of judicial determination and settlement therein.*" The court having made merely such reference to the pendency of said action of *Bell v. Staacke*, proceeded in its "Conclusions of Law" to declare (Tr. p. 72) that the court was vested by said action of *Kate M. Bell and James L. Crittenden v. San Francisco Savings Union et al.*, No. 4424, with jurisdiction with respect to said two several tracts of land for the purposes of determining the issues raised therein by the complaint of said plaintiff and the answers thereto (which include every issue in *Bell v. Staacke*), and for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land, and, further, that upon confirmation of any sale made pursuant to the decree the title of any purchaser "*be quieted in this action*

against any and all claims of the parties hereto or of any of them'' (Tr. p. 73), also that the defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed was entitled to no other judgment than that the 10,067.2 acre tract be sold *any of them''* (Tr. p. 73), also that the defendant

The court found, in and by the said Findings of Fact (Tr. pp. 21-33), that John S. Bell was in possession of said tract of 10,067.2 acres of land from October, 1874, to August 23rd, 1887, as his property when he sold and conveyed the same to Dwight W. Grover, his uncle, Thomas Bell, selling to Grover at the same time the 4,000 acres adjoining, the purchase price of both tracts being \$350,000—\$70,000 cash and the balance secured by separate mortgages upon said tracts, \$216,000 on said 10,067.2 acres and \$54,000 on said 4,000 acre tract; that the notes and mortgages were made and executed to Thomas Bell for the purpose of rendering the execution of releases and partial releases more convenient and easy, to facilitate sales and in furtherance of an agreement between Thomas Bell and John S. Bell which provided that Thomas Bell should receive the money due from Grover to John S. Bell and apply the same in payment of an indebtedness of about \$25,000 and any advances thereafter made by Thomas Bell to John S. Bell; that the interest was not paid on said indebtedness by Grover and his grantee, Rosener, and said Grover and Rosener then agreed with said John S. Bell and Thomas Bell to convey back to John S. Bell said tract of 10,067.2 acres of land and to Thomas Bell said 4,000 acre tract, except such parts thereof as had been sold and conveyed by Grover and Rosener to other persons, and that the promissory notes secured by said mortgages should be transferred and surrendered to said Grover and Rosener; that it was agreed and understood by and between Thomas Bell and John S. Bell that said lands should be reconveyed to them respectively according to their original titles, except in so far as there had been sales made from the tract formerly belonging to John S. Bell, and that the conveyance back was to be made

through George Staacke; that on the 7th day of March 1889, under and in pursuance of said agreements the notes secured by said mortgages were transferred and surrendered to said Rosener for himself and Grover, and said Grover and Rosener made and executed a deed of conveyance to said George Staacke purporting to convey to him said tracts of land, excepting certain parts described in the Findings—all in pursuance of said agreements to convey back to John S. Bell and Thomas Bell, which deed was duly recorded on the 3rd day of June 1889, in the records of Santa Barbara county and thereafter on June 6, 1889 was delivered to said George Staacke; that said George Staacke paid no consideration for the same and never took possession of said real property or any part thereof or assumed any control over the same under or by virtue of said conveyance or otherwise; that on March 10th, 1889, John S. Bell entered upon and took possession of said tract of 10,067.2 acres as owner thereof and was in the open, notorious and adverse to all the world possession thereof, paying all taxes levied thereon; that said Staacke had notice and well knew and understood, before the execution and delivery to him of said deed of March 7th, 1889, and before the recording thereof, that John S. Bell had sold and deeded said land to Grover and that there was due to him from Grover more than \$216,000 on account of the purchase price thereof, and other facts stated in said Findings; that said Staacke was never in possession of said tract of 10,067.2 acres or any part thereof in any manner whatsoever or as trustee or otherwise; that it was never at any time agreed between John S. Bell and Thomas Bell and George Staacke, or by either or any of them, that said Staacke should hold said 10,067.2 acres or any part thereof as security for the payment by John S. Bell to Thomas Bell of any money or indebtedness whatsoever or that said Staacke should go into possession thereof or should collect or receive any rents, issues or profits thereof; that said Staacke did not become and had not been and was not vested with the legal title of said tract of 10,067.2 acres or any

part thereof in trust for Thomas Bell or to secure the payment of any sum or sums of money advanced by Thomas Bell to John S. Bell and had no beneficial or other interest in the same, and held the naked legal title so conveyed to him by Grover and Rosener "in trust for the purpose of conveying and to convey and deed to the plaintiff" (John S. Bell) the same; that said Staacke borrowed on February 3rd, 1892, from the San Francisco Savings Union \$60,000 for the use of Thomas Bell upon his (said Staacke's) promissory note therefor, endorsed and guaranteed by Thomas Bell, and to secure the payment thereof executed and delivered a trust deed upon both of said tracts of land; that said \$60,000 was credited by Thomas Bell to John S. Bell; that said San Francisco Savings Union, after the death of Thomas Bell, presented to the executors of his estate a claim against the estate of Thomas Bell upon said note of \$60,000, and that said claim was duly approved and allowed by the executors of said estate and by the Superior Court having jurisdiction of said estate and was still held by San Francisco Savings Union against said estate of Thomas Bell and was a valid claim; that no authority was given to or vested in said George Staacke by or under the terms of the trust upon which said lands were conveyed to him or otherwise to borrow any money upon said land or any part thereof or to mortgage or deed or convey in trust the same as security for any moneys borrowed by him thereon, and that said Staacke had no power or authority as such trustee to borrow said \$60,000 or any part or portion thereof or to make or execute the trust deed to Thaddeus B. Kent and Henry C. Cambell to secure payment thereof or to convey said lands or any part thereof, and that the borrowing of said \$60,000 and the execution of said trust deed were wrongful and in violation of the trust upon which said lands were held by Staacke; that all of said \$60,000 so borrowed by said Staacke was received by Thomas Bell for his individual use and benefit, except as John S. Bell may have received the benefit of credit on his indebtedness to Thomas Bell; that

said Staacke wrongfully and in violation of said trust refused to convey to plaintiff (John S. Bell) that portion of said tract of 10,067.2 acres of land conveyed to him (Staacke) by said deed of March 7th, 1889; that each and all of the sums of money advanced by Thomas Bell to John S. Bell from and after the 6th day of March, 1889, was and were made to John S. Bell individually and personally from motives of love and affection and not upon or by reason of any claim or assertion on the part of said Thomas Bell that said agreement of August 27th, 1887, between him and John S. Bell remained or continued in force or upon or by reason of any claim or assertion of any lien upon said 10,067.2 acre tract or upon or by reason of any claim or assertion by said Thomas Bell or by said George Staacke that said deed of March 7th, 1889, was or had been made to said George Staacke as security for the payment of any money due to Thomas Bell or for any advances of money made by Thomas Bell to John S. Bell; that said John S. Bell was indebted in the sum of \$52,120.15 to Thomas Bell on the 16th of October, 1892, when Thomas Bell died, but that said indebtedness, and the claim of Thomas Bell therefor, was not nor was any part of it a lien upon the land or any part of the land conveyed by said deed of March 7th, 1889, to George Staacke.

The Court found as Conclusions of Law (Tr. pp. 33 34)

“1. That the plaintiff is entitled to a good and sufficient deed of conveyance from said George Staacke of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, and to decree that said George Staacke make execute and deliver to the plaintiff a good and sufficient deed and conveyance of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889.

"2. That the plaintiff is entitled to an injunction enjoining and restraining said George Staacke and said Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and any and all persons claiming by or through or under them or either of them, from asserting or claiming any right, title or interest to any or all of that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, being the land described in the cross-complaint of defendants and in paragraph II of said amended and supplemental complaint.

"3. That the plaintiff is entitled to his costs in this action incurred and to a judgment therefor.

"4. That said defendant Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, is entitled to judgment herein against said plaintiff John S. Bell for the sum of fifty-two thousand one hundred and twenty and 15-100 dollars, with interest thereon from the 16th day of October, 1892."

The court thereafter on the seventh day of June, 1901, made and filed additional Findings of Fact upon material issues raised by the pleadings, not covered by its former Findings, and Conclusions of Law (Tr. pp. 34-35), stating as a reason therefor that,

"It appearing to the Court that in the findings of fact in the above entitled action, heretofore made and filed on March 6th 1901, there is an omission to dispose of the issue of fact raised by the plaintiffs amendment to his answer to the defendants' amended cross-complaint, which amendment to plaintiff's said answer was filed June 17th, 1897, and it appearing further to the Court that said omission was through inadvertence;

Now therefore, in as much as the judgment has not yet been made or entered on said findings, the Court of its own motion, to supply said omission in said findings and upon the evidence submitted at the trial of said action, makes the following additional findings of fact and conclusions of law."

The Court in and by said judgment and decree (Tr. pp. 12-17) in *Bell v. Staacke*, made on June 29th, 1901, adjudged and decreed, among other things, that John S. Bell had deeded and conveyed, after the commencement of said action of *Bell v. Staacke*, said tract of 10,067.2 acres and all his right, title and interest therein to Catherine M. Bell and James L. Crittenden, and that said Catherine M. Bell and James L. Crittenden had succeeded to all the right, title and interest of John S. Bell in and to said tract of land and to all the rights of action of said John S. Bell, each to an undivided one-half thereof, and that the Court had theretofore ordered said action to be continued in the name of the original plaintiff, John S. Bell; that said successors to John S. Bell were entitled to the relief prayed for in the amended and supplemental complaint including,

First: That George Staacke, one of the defendants in this action, make, sign and acknowledge, execute and deliver a good and sufficient deed and conveyance to Katherine M. Bell and James L. Crittenden each of an undivided one-half of the following described lands, to-wit All that real property situate in the County of Santa Barbara, State of California, forming a part of the rancho known as "Rancho de Los Alamos." to-wit:

(Same description of 10,067.2 acres tract of land as on pages 6, 7. 8, and 9. of Tr.)

"Fifthly: That the defendants George Staacke, and Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and each of said defendants and the attorney and attorneys, agent and agents of each of said defendants and any and all persons acting for or claiming any right, title or interest of, in or to the following described lands be and are enjoined and restrained, and are hereby commanded to refrain and desist from asserting, maintaining or pretending to have any right, title, interest, lien, claim or demand in, to, upon or against all or any part or portion of the following described lands and real property, to-wit: All that real property situate in the County of Santa Barbara,

State of California, forming a part of the rancho known as "Rancho de Los Alamos," to-wit: "

(Same description of 10.062.2 acres tract of land as on pages 6, 7, 8 and 9 of Tr.,)

It adjudged and decreed in and by said judgment of June 29th, 1901, in favor of said successors and grantees of John S. Bell the other issues and matters included in and covered by said Findings of Fact and Conclusions of Law (Tr. pp. 14-17).

The bill further avers and alleges (Tr. p. 11):

"That on the *29th day of June, 1901*, a judgment and decree was duly made and rendered in and by the said Superior Court of Santa Barbara County and Hon. W. S. Day, Judge thereof, and was duly filed therein on said 29th. day of June, 1901, in said Superior Court by C. A. Hunt, County Clerk of said County of Santa Barbara and Clerk of said Superior Court, in an action then pending in said Superior Court entitled "John S. Bell, plaintiff vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," and in which action Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, at her request as such administratrix had been substituted by order of said Superior Court made in said action as defendant in place of defendants George Staake and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased; that the said judgment and decree so rendered, made and filed on the 29th day of June, 1901, was thereafter duly *entered on the 9th day of July, 1901*, by the Clerk of said Superior Court in the records and Judgment Book of said Superior Court; that said judgment and decree was entitled in said action and cause and was in the words and figures following, to-wit: " (Setting forth at length a copy thereof on pp. 12-17).

(Admitted by answers pp. 262-3; 167-8; 106; 137. A frivolous denial that said judgment "was in the words

and figures alleged and set forth in said bill of complaint" made by *some* of the defendants on pages 106 and 137 is coupled with a direct *admission* "that a *judgment of like purport* was made by the said Superior Court and filed in said action on the 29th day of June 1901).

That the appeal taken on the 8th day of July, 1901, by the defendants in said action from said judgment was dismissed by the Supreme Court for want of jurisdiction. (Tr. pp. 17-18). (Admitted, Tr. pp. 106-7; 137-8; 167-8; 263. Hammon and Van Deinse deny merely "that the said appeal was so dismissed for want of jurisdiction").

"That the said judgment and decree thereby by such dismissal of the appeal became and was affirmed; that said judgment and decree ever since has been and remained and still is in full force; and that said judgment and decree was and is a final adjudication of the rights and interests of the parties to said action in which it was rendered and entered." (Tr. p. 18) (Denied by defendants).

"That the said Superior Court and the Judge thereof, in said action in which said judgment and decree was rendered, rendered and filed Findings of Fact and Conclusions of Law therein on the 6th day of March, 1901, *and thereafter rendered and filed additional Findings of Fact and Conclusions of Law on the 7th day of June, 1901, on material issues raised by the pleadings in said action*; that no motion for a new trial in said action of *John S. Bell v. George Staacke et al*, and no notice of intention to move for a new trial therein was made, given, served or filed on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901."

(Tr. p. 18) (*Admitted unqualifiedly* by Hammon and Van Deinse, Tr. p. 263-4; not denied by Associated Oil Co., p. 167-8; the other defendants merely evade deny-

ing the allegation by the evasive denial "that the time to serve and file any notice of intention to move for a new trial in the said action entitled "*John S. Bell v. George Staacke et al*" after the decision therein made on the 6th day of March 1901 expired on or about the 17th day of June 1901." Tr. pp. 111; 142).

"That each and all of the defendants and attorneys for the defendants in said action in which said judgment and decree of June 29th, 1901, was rendered and filed had notice and well knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the time and as hereinabove in this paragraph and in this bill alleged and shown." (Tr. p. 20) (Not denied).

"That it was declared and provided in and by the laws of the State of California and by the Act of the Legislature of the State of California entitled "An Act to establish a Code of Civil Procedure," approved March 11th, 1872, as amended in and by that certain Act of the Legislature of the State of California entitled "An Act to amend the Code of Civil Procedure" approved March 24th, 1874, and in and by section 659 of said Code of Civil Procedure as amended by said Act of March 24th, 1874, that "The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the court, or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case . . .; that it was declared and provided in and by section 254 of said Act of March 24th, 1874, that said Act should take effect on the first day of July, 1874; that said section 659 of the Code of Civil Procedure of California, as amended by said Act of March 24th, 1874, was and continued to be in full

force from the first day of July, 1874, until May 20th, 1907, when it was amended by an Act of said Legislature of the State of California entitled "An Act to amend sections six hundred and fifty-six, six hundred and fifty-nine, six hundred and sixty, and to re-number and amend section six hundred and sixty-three and a half of the Code of Civil Procedure, all relating to new trials," approved on March 20th, 1907, by the Governor of the State of California; that said section 659 was amended by said Act approved March 20th, 1907, so as to read as follows, "The party intending to move for a new trial must, within ten days after receiving notice of the entry of the judgment, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the Court, or a bill of exceptions, or statement of the case . . . ;" that said section 659 of said Code of Civil Procedure of California and the provisions thereof as amended by said Act of March 20th, 1907, has been in full force since May 20th, 1907, and is now in full force; that said action in which said judgment and decree dated the 29th day of June, 1901, was rendered and filed was tried without a jury by said Superior Court." (Tr. pp. 19-20 (Not denied).)

"That it is provided and declared in and by section 955 of said Code of Civil Procedure that "The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal," and said section 955 and the provisions thereof have been in full force and effect since said Act of March 11th, 1872, was enacted and went into effect, and is and now are in full force and effect; that the Supreme Court of California did not in or by its order, judgment, and decree dismissing the appeal from said judgment and decree of said Superior Court dated and filed in said Superior Court on the 29th day of June, 1901, dismissed

said appeal without prejudice to another appeal or to any other appeal and did not either expressly or otherwise provide or declare that the dismissal of said appeal was made expressly or otherwise without prejudice to another appeal or to any other appeal; that said appeal taken by the defendants from said judgment and decree dated June 29th, 1901, was dismissed by an order and judgment of the Supreme Court of the State of California duly made and rendered in bank on the 16th day of September, 1902, and that said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside." (Tr. pp. 20-21) (*Not denied*; admitted by Hammon and Van Deinse, Tr. pp. 265-266).

"That the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision and the only decision of said Superior Court in said action entitled "*John S. Bell, plaintiff v. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants,*" upon which said judgment and decree of said Superior Court was made and filed on the 29th day of June, 1901, as aforesaid; that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are in the words and figures following, to wit:" (Setting forth at length a copy thereof. (See pages 21 to 35). (Admitted by Hammon and Van Deinse, Tr. pp. 265-6; *not denied* by any of the defendants).

"That the findings of fact and conclusions of law and the decision of said Superior Court in said action of *John S. Bell v. George Staacke et al*, on the 9th day of June and binding upon all the parties to said action, and July, 1901, became and ever since have been final, conclusive to their successors in interest, and upon each and all of the heirs of said Thomas Bell, deceased, and the jurisdiction and power of said Superior Court to hear or grant

any motion for a new trial in said action was then terminated forever and ceased to exist, and the said Superior Court and any and all appellate courts of the State of California, and the Supreme Court of the State of California lost and ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court. (Tr. pp. 18-19). (Denied).

SPECIFICATIONS OF THE ERRORS RELIED UPON BY APPELLANT FOR REVERSAL OF DECREE DISMISSING BILL.

The appellant hereby refers to its assignment of errors in the Transcript on pages 324-341 and makes each and all of the assignments of errors therein contained and set forth including the reasons therein stated a part of this brief as fully as if set forth and printed at length herein as a part of these specifications and hereby states that appellant makes each of said assignments of error a specification of error on this appeal and relies upon each of the same with the reasons therewith stated as a ground for the reversal of the order and judgment dismissing its Bill of Complaint in this suit.

The appellant further shows and states that it asserts and urges and intends to urge on this appeal and the hearing thereof each and every one of said errors and assignments of error with the reasons and grounds therewith set forth in said assignment of errors.

Appellant further states that it specifies, asserts and intends to urge on this appeal that said decree dismissing the Bill of Complaint was erroneous in each of the following particulars and respects, to-wit:

(1.) In dismissing said Bill of Complaint whereas said Bill is meritorious and entitled plaintiff to equitable relief.

(2.) In sustaining the special defense set up in the answers of certain defendants upon which said decree was based and designated in the decree as "the defense heretofore presentable by plea in bar," whereas said defense was without merit and should have been overruled.

(3.) In holding and deciding in and by the opinion and decision on the hearing of said special defense directing said decree to be entered (Tr. p. 294) that "the complainant bases its claim of right or title on the deed from John S. Bell to Crittenden, on the first or original decree in *Bell v. Staacke*, supra, and on the deed deposited by Staacke with the Clerk of the court in order to effect a stay of proceedings pending the appeal" (quoted from decision), whereas it appears in and by the Bill of Complainant that the complainant relied not only upon the deed from said John S. Bell to James L. Crittenden, the said first or original decree in *Bell v. Staacke*, and upon said deed executed by Staacke and deposited with the clerk of the court, but also upon other grants, deeds and conveyances stated in said Bill and upon the final decree in said suit of *Kate M. Bell et al., v. San Francisco Savings Union et al*, No. 4,424 and a sale to be made thereunder as provided therein of said 10,067.2 acre tract and upon its right under said last mentioned decree to have all surplus proceeds arising from such a sale of the 10,067.2 acres paid to George Staacke except such portion thereof after the payment of the indebtedness due the San Francisco Savings Union as fixed by said decree,—the said surplus proceeds being received and held by said Staacke under and subject to the trusts upon which said 10,067.2 acre tract of land was granted and conveyed by said Grover and Rosner to said Staacke on March 7th, 1889, by deed made and executed on that date, and of which trusts said John S. Bell was the or one of

the beneficiaries and to which complainant was and is a beneficiary as the successor in interest of said John S. Bell by mesne grants and conveyances.

(4.) In holding and deciding that the deed executed by said George Staacke to Kate M. Bell and James L. Crittenden under the order and judgment in the original decree in said action of *Bell v. Staacke*, and deposited by said Staacke with the clerk of Superior Court of Santa Barbara County was so executed by said Staacke "in order to effect a stay of proceedings pending the appeal" from said decree in *Bell v. Staacke*, whereas it appears and is alleged in and by the Bill of Complainant that said deed was so executed by said Staacke in compliance with said decree and not otherwise and said fact was not an issue on said separate hearing of said special defense and there was no evidence introduced in relation thereto and no stipulation or admission made in regard to said facts, and said finding and decision as to said matter is contrary to and against the law and the truth.

(5.) In holding and deciding that the said first or original decree in *Bell v. Staacke* "was afterwards vacated by the Supreme Court of the State and an entirely different decree entered upon a retrial" and that such a decree on a retrial "was later affirmed by the Supreme Court on appeal" (Tr. p. 294), whereas it appears and is alleged in and by said Bill to the contrary and also appears and is alleged in and by said Bill and is true in fact and law that said first or original decree in *Bell v. Staacke*, became and was final, and that neither the Superior Court of Santa Barbara County nor the Supreme Court of the State of California had any jurisdiction, power or authority to vacate, modify or set aside said original decree in *Bell v. Staacke* or to grant a new trial therein or to retry said action of *Bell v. Staacke* or to make or render any other or later decree therein or affirm any such later decree: and had a trial on the merits of said Bill been had, it would have been proved that the plaintiff in

said action of *Bell v. Staacke*, at all times objected to and protested against any proceeding or proceedings purported to have been had and taken in said action of *Bell v. Staacke*, after the dismissal of the appeal from said original judgment therein and also on the appeal taken by the defendants from the order of June 7th, 1901, denying a new trial on the ground that said Superior and Supreme Courts and each of them had no power, authority or jurisdiction to make any order, judgment or decree granting a new trial in said action or to retry said action or to make or enter any other judgment or decree therein.

(6.) In holding and deciding that by such purported second decree in *Bell v. Staacke* and a purported sale thereunder of said 10.067.2 acre tract of land every right, title and interest of said John S. Bell and his successor in interest became vested in the purchaser at the sale under the commissioner's deed (Tr. pp. 294-295), whereas in fact and in law said purported second decree in *Bell v. Staacke* and purported sale and deed thereunder were and each of the same was absolutely null and void for the reason that the court had no jurisdiction, power or authority to make, render or enter said purported second decree or any judicial sale thereunder and no title, right or interest was transferred to or became vested in any purchaser at such purported sale or under any commissioner's deed.

(7.) In holding and deciding that the Supreme Court of the State of California was not without jurisdiction to award a new trial in said action of *Bell v. Staacke*, after dismissing the appeal from the original judgment therein, whereas it appears and is alleged in said Bill that it was without such jurisdiction and was and is true in fact and in law that it was without any such jurisdiction to award a new trial, and it is provided and declared in and by section 955 of the Code of Civil Procedure of California that "the dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly

made without prejudice to another appeal' ' and is also provided and declared in and by the Constitution of the State of California (Art. VI) that a decision of the Supreme Court shall be and become final thirty days after the rendition and filing thereof.

(8.) In holding and deciding that the decree in the action of *Kate M. Bell et al., v. San Francisco Savings Union et al.*, did not adjudicate and control as to all the rights to titles and interests of the parties to said action of *Bell v. Staacke*, and as to the several trusts in Campbell and Kent and in said Staacke, whereas said decree in said later action of *Bell v. San Francisco Savings Union* did so adjudicate and control and said 10,067.2 acre tract of land was subject to be sold and could only be sold under and in pursuance of said last-mentioned decree.

(9.) In holding and deciding that the jurisdiction of the Supreme Court of the State of California to award a new trial in an action after dismissing an appeal from the final judgment depends solely and exclusively upon the constitution and laws of the State of California and that the repeated decision of said Supreme Court upholding its jurisdiction is not subject to review in the District Court of the United States or any other tribunal, for the reason that the contrary is true according to the decisions of the Supreme Court of the United States and said Supreme Court of California did not have in said action of *Bell v. Staacke*, any power or jurisdiction to award a new trial therein after the dismissal of the appeal from the final judgment upon the purported notice of intention to move for a new trial, prematurely given, served and filed, under the provisions of section 659 of the Code of Civil Procedure and under the settled rule of construction of said section by the Supreme Court of California, and also for the reason that the question of a want of jurisdiction to award such a new trial by said Supreme Court of California in said action of *Bell v. Staacke* was upon said Bill a question of fact to be tried and

decided and was subject to review by the United States District Court in which said Bill was filed and pending, and also for the further reason that if said Supreme Court had no such jurisdiction any decision by it that it did have it was null and void and subject to review on said Bill in said United States District Court.

(10.) In holding and deciding that the complainant was by said Bill claiming under said original decree in *Bell v. Staacke*, and also at the same time claiming in opposition thereto, whereas the fact and truth is to the contrary.

(11.) In holding and deciding each of the matters and questions held by it adversely to the complainant in its opinion and decision (Tr. pp. 291-296) directing that said decree be entered, for the reason that there was no evidence to support the decision upon said matters and questions or any of them, and also for the reason that the Bill should have been sustained as meritorious and a decision rendered in favor of the complainant upon the special defense passed upon by the court.

(12) In holding and deciding that the Bill was not meritorious and did not entitle the complainant to any relief, for the reason that said Bill was meritorious and sufficient and did clearly show that the complainant was entitled to the relief prayed for in and by said Bell, and also for the reason that said special defense was not an issue raised by said Bill and the merits of the Bill as a whole were not heard or tried by or presented or submitted to the court on the separate hearing of said special defense set up by the answers, and the decision of the entire merits of the Bill as presented by the Bill without a trial thereof upon the whole merits of said Bill and without any opportunity to present evidence and testimony in support of said Bill tended to deprive and did deprive the complainant of the right to be heard and to have a fair and impartial trial on the merits guaranteed to it by the constitution of the United States.

(13) In holding and deciding and in stating in its said decree (Tr. p. 296) that it was "admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco were rendered, made and entered and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each of said several answers deferring to the answers mentioned in said decree) and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P. Hammon and F. C. Van Deirse," whereas it was not either so stipulated or agreed by the complainant or by the solicitors or counsel for complainant or by any of them and the minutes of said court do not show any such stipulation, and whereas the only admission and stipulation on said hearing was made by the solicitors for both the complainant and the defendants and merely stipulated and admitted that the papers purporting to be copies of said judgments, orders and decrees alleged or claimed to have been rendered and entered in said several courts of the State of California *were substantially correct copies thereof*, and appellant asserts that said holding and statement about said stipulation and admission was incorrect and not true in fact and tended to and does tend to prejudice and injure the rights of complainant involved in the suit and the the correction thereafter made by the Judge of said court (Tr. p. 323-324) was not sufficient and did not correctly state the admission or stipulation made by the solicitors for the respective parties on the hearing of said special defense.

The appellant in specifying the foregoing particulars and respects in which said decree was erroneous does not waive or on tend to waive any of the specifications of error contained in said assignments of error

on pages 324 to 341, both inclusive, of the transcript, and not only urges each and all of said assignments of error as specifications of error in this brief, but refers to and makes each of the points contained in this brief and numbered I to a specification of error as to said decree and a ground and reason for the reversal thereof.

POINTS AND AUTHORITIES.

POINT 1.

THE SUPERIOR COURT HAD NO JURISDICTION TO HEAR OR GRANT A NEW TRIAL IN ACTION No. 2826, AND HAD THE NEW TRIAL BEEN GRANTED IT WOULD HAVE BEEN THE DUTY OF THE SUPREME COURT TO HAVE REVERSED THE ORDER, FOR THE REASON THAT THE NOTICE OF INTENTION TO MOVE FOR A NEW TRIAL WAS *PREMATURE AND INEFFECTUAL FOR ANY PURPOSE*: AND THE SUPREME COURT WAS, FOR THE SAME REASON WITHOUT JURISDICTION TO REVERSE THE ORDER DENYING DEFENDANTS' MOTION FOR A NEW TRIAL AND TO ORDER A NEW TRIAL, AND FOR THE SAME REASON THE SUPERIOR COURT WAS WITHOUT JURISDICTION TO HOLD A SECOND TRIAL OF SAID CAUSE.

Cal. Code of Civil Procedure, secs. 656, 659;
Hinds v. Gage, 56 Cal. 486-488;
Mahoney v. Caperton, 15 Cal. 314-316;
Bates v. Gage, 49 Cal. 126-128;
Spotteswood v. Weir, 66 Cal. 529;
Careaga v. Fernald, 66 Cal. 351, 352;
Harris v. Careaga, 1 W. C. Rep. 467;
Duff v. Duff, 71 Cal. 513-519;
Dominguez v. Mascutti, 74 Cal. 269-271;
Bell v. Marsh, 80 Cal. 411;

Broder v. Conklin, 98 Cal. 360;
Sutton v. Symons, 100 Cal. 576-7;
Recl'n. Dist. No. 556 v. Thisby, 131 Cal. 572-574;

(a) *The foregoing decisions of the Supreme Court of California, constituting a settled rule of construction of sections 656 and 659 of the Code of Civil Procedure of California, in connection with the facts in the case at bar, protect the complainant, a resident and inhabitant of the State of Arizona in the enjoyment of its vested property rights acquired under the deed of September 18, 1902, notwithstanding the later decision of the Supreme Court of California refusing to apply the law of the earlier decisions, in the case of Bell v. Staacke, 137 Cal.*

Gelpcke v. Dubuque, 1 Wall. 175-117, L. ED. 520;
Rowans v. Runnels, 5 How. 139;
Ohio etc. Co. v. Debolt, 16 How. 432;
Havemeyer v. Iowa Co., 13 Wall 303, 18 L. Ed. 42;
Mitchell v. Burlington, 4 Wall. 275, 18 L. Ed. 161;
Lee County v. Rogers, 7 Wall. 303, 19 L. Ed. 161;
City etc. v. Lamson, 9 Wall 486, 19 L. Ed. 730;
Olcott v. Supervisors, 16 Wall 678;
Connors v. Thayer, 94 W. D. 642, 24 L. Ed. 135;
Douglas v. Pike Co., 101 U. S. 677;
Louisiana v. Pillsbury, 105 U. S. 295, 26 L. Ed. 1096.
Taylor v. Ypsilante, 105 U. S. 677, 26 L. Ed.
Burgess v. Seligman, 107 U. S. 678, 27 L. Ed. 359;
Carroll Co. v. Smith, 111 U. S. 563;
Smith v. Tallapoosa Co., 2 Woods 578, 22 Fed. Cas. 13,113;
Burleigh v. Town of Rochester, 5 Fed. 672;
So. Pac. R. R. Co. v. Orton, 6 Sawy. 195, 32 Fed. 477-478;
Jones v. Southern Hotel Co., 86 Fed. 372;
Percy Summer Club 1. Astle, 163 Fed. 5-14.

If a court act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought,

even prior to a reversal in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers. This distinction runs through all the cases on the subject.

Williamson et al v. Berry, 49 U. S. (8 How.) 540;

Wilcox v. Jackson, 13 Pet. 499;

Shriver's Lessee v. Lynn et al, 2 How. 59;

Lessee of Hickey v. Stewart et al, 3 How. 750;

Christmas v. Russell, 5 Wall. 305;

Thompson v. Whitman, 18 Wall. 457;

McElmoyle v. Cohen, 13 Pet. 312;

Knowles v. Gas, Light & Coke Co., 19 Wall. 58;

D'Arcy v. Ketchum, 11 How. 165;

Webster v. Reed, 11 How. 437;

Harris v. Hardemann, 14 How. 334;

Kingsbury v. Yneistra, 59 Ala. 320.

“A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. For if it be null, no action upon the part of the plaintiff, no inaction upon upon the part of the defendant, *no resulting equity in the hands of third person*, no power residing in any legislative or other department of the government, can invest it with any of the elements of power or of vitality.

Freeman on Judgments (4th Ed.), Sec. 117, and cases cited.

(b) *Federal Courts have co-ordinate jurisdiction with state courts, and are bound to exercise their own judgment as to the meaning of its laws; first when its jurisdiction rests upon diverse citizenship;*

Burgess v. Salegman, *supra*;

Kuhm v. Fairmount Coal Co. 215 U. S. 349;

second, where there is a conflict of decisions in the state court, and the last in point of time operates to impair

the obligation of contracts and destroy rights that have accrued and become final upon the faith of earlier decisions.

Muhlker v. N. Y. & H. R. R. Co., 197 U. S. 544.

POINT 2.

THE SUPERIOR COURT OF CALIFORNIA WAS WITHOUT JURISDICTION OF THE SUBJECT MATTER TO MAKE AND ENTER A DECREE AND ORDER OF SALE UPON THE PURPORTED SECOND TRIAL OF *Bell v. Staacke* No. 2826.

This is clearly so for the reason that prior to the commencement of said action, Staake, at the request of Thomas Bell, and with the knowledge and consent of John Bell had conveyed the 10,067.2 acre tract by deed of trust to the trustees of the San Francisco Savings Union, and both said Saving Union and said trustees were purchasers for value and without notice of the equities of John Bell *and were not parties to said action* No. 2826; said judgment and order of sale were therefore void for want of jurisdiction.

Civil Code of Cal. Sec. 2258

Page v. O'Neal, 12 Cal. 483;

Ricks v. Reed, 19 Cal. 298;

Warnoeck v. Harlow, 96 Cal.

Moore v. Crawford 130 U. S. 122-23-24;

Pomeroy's Eq. Jur. Sec. 1053.

An order of sale by a court not having jurisdiction of the res, is void.

Black on Judgments Sec 242;

Ladd & Tillon v. Mason 10 Ore. 208;

People v. Holladay, 68 Cal. 439;

Munday v. Vail 34 N. J. Law. 418;

Clapp v. M. C. Cable 84 HMM 379—32 N. Y.

Supp. 425.

POINT 3.

THE DECREE IN *Bell v. San Francisco Savings Union*, No. 4424, IS A VALID AND CONTROLLING DECREE AND A FINAL AND CONCLUSIVE DETERMINATION OF BOTH THE STATUS AND THE RIGHTS OF EACH AND ALL OF THE PARTIES IN *Bell v. Staacke*, No. 2826, AS WELL AS FIXING THE STATUS OF THE SAN FRANCISCO SAVINGS UNION AND ITS TRUSTEES AS PURCHASERS FOR VALUE AND WITHOUT NOTICE, OF THE 10,067.2 ACRE TRACT.

(a) In order to have availed herself of the judgment and order of sale in action No. 2826, the defendant, Teresa Bell as administratrix etc., would be required to plead the then pendency of the action of *Bell v. Staacke*, No. 2826, in abatement of the latter action of *Bell et al., v. San Francisco Savings Union et al.*, No. 4424 until the judgment and order of sale in the former had become final.

Harris v. Barnhart, 97 Cal. 551;

Brown v. Campbell, 100 Cal. 635. S. C. 110 Cal 645

(b) Until then the pretended judgment and order of sale in the former action of *Bell v. Staacke* could not be pleaded in bar because it could not be used as evidence until it had become final.

Brown v. Campbell 110 Cal. 645-650.

(c) Nothing, however, operated to prevent the defendant, Teresa Bell, as administratrix etc., from waiving her right to plead the pendency of the former suit in abatement of action No. 4424, and from waiving her right to subsequently plead and prove the judgment and order of sale in said former action in bar of the latter or from consenting to and having all of said issues tried again, as she did, since she herself and all the other parties to action No. 2826, were also parties to action No. 4424, the later action No. 4424 involving not only all the issues of the former action

but additional issues and parties and the same subject matter and property.

Brown v. Campbell, 100 Cal. 646;
Harris v. Barnhart, 97 Cal. 546;
Noftzger v. Gregg, 99 Cal. 83;
Estate of Blythe, 99 Cal. 472;
Tyrell v. Baldwin, 67 Cal. 1-5.

(d) When the rights under a judgment or decree or an estoppel by judgment are waived or not pleaded, *the latest decree prevails*, and rights acquired by virtue of a judgment or decree are liable to be terminated.

Simple v. Wright, 32 Cal. 659-668;
Rohms v. Minis, 40 Cal. 421;
Rohms v. Minis, 40 Cal. 421;
McLean v. Baldwin, 136 Cal. 565-569.

POINT 4.

THE JUDGMENT IN *Bell v. San Francisco Saving Union et al.*, HAS NEVER BEEN SATISFIED AND THE TRUSTS DECLARDED IN THE DEED OF TRUST FROM STAACKE TO CAMPBELL AND KENT, TRUSTEES, HAVE NEVER BEEN EXECUTED.

(a) In California a deed of trust can have nothing in common with a mortgage except that it may be executed to secure an indebtedness; but in that case, upon default, an action of foreclosure and for an order of sale does *not* lie, but the trustee may sell under and according to the directions of the trust deed.

Koch v. Briggs, 14 Cal. 256-263
Fuquay v. Stickney, 41 Cal. 583-587;
Whitmore v. San Francisco Sav. Union, 50 Cal. 145-150;
Grant v. Burr, 54 Cal. 298-301;
Bateman v. Burr, 57 Cal. 480-483;
Durkin v. Burr, 60 Cal. 360-361;
Savings & Loan Soc. v. Deering, 66 Cal. 360-61;
 5 Pac. 353;

Hartridge v. Sheppard, 71 Cal. 470-78 12 Pac. 480;
Moore v. Calkins, 95 Cal. 435-37-38, 30 Pac. 583;
Savings & Loan Soc. v. Burnett, 106 Cal. 514-28-
 39 Pac. 922;
Herbert Kroft Co. v. Bryan, 140 Cal. 73-80,
 73 Pac. 745.

POINT 5.

APPELLANT'S GRANTOR'S TITLE TO AND INTEREST IN THE 10,067.2 ACRE TRACT WAS CONCLUSIVELY AND FINALLY ADJUDICATED UPON THE FIRST TRIAL OF *Bell v. Staacke*, No. 2826.

At the time said action of *Bell v. Staacke*, No. 2826, was pending in the courts of California section 659 of the Code of Civil Procedure provided as follows:

"The party intending to move for a new trial *must*, within *ten days* after the verdict of the jury, if the action be tried by a jury, or *after notice of the decision of the court*, or referee, if the action were tried without a jury, *file with the clerk and serve upon the adverse party a notice of his intention*, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case."

The above provision of the law went into effect on March 24th 1874 and remained in force until May 20th 1907, when it was amended. The only notice of intention to move for a new trial by defendants in *Bell v. Staacke*, was given *before* the trial Judge made and filed his *Additional Findings of Fact and Conclusions of Law*, and no notice of intention to move for a new trial was ever given thereafter.

In a long line of authorities the Supreme Court of California had held, in construing the provisions of section 939 of the Code of Civil Procedure requiring an appeal to be taken within one year after entry of

judgment that the time for appeal from a judgment only began to run after entry thereof, and that notice of appeal given prior to the entry of judgment was premature, and that an appeal based upon such a notice must be dismissed for want of jurisdiction. (*McLaughlin v. Doherty*, 54 Cal. 519; *Home of Inebriates v. Kaplin*, 84 Cal. 488, 24 Pac. 119; *Wood v. Water Company*, 122 Cal. 152, 54 Pac. 726; *In re Devincenzi's Estate* 131 Cal. 452, 63 Pac. 723.) This doctrine based upon the duty of the court to give effect to the plain legislative intent expressed by a statute was reaffirmed in *Bell v. Staacke* 137 Cal. 70 Pac. 171.

The statute limitation of time for taking an appeal cannot be extended, and when it has expired it cannot be arrested or called back by any court.

Conboy v. First Nat. Bank etc., 203 U. S. 141-3 144-5.

The court says:

"The limitation (of time for appeal fixed by the Supreme Court in accordance with the act) has the same effect as if written in the Statute, and the allowance of an appeal on certificate *cannot operate as an adjudication that it is taken in time.* . . . When the time for taking an appeal has expired *it cannot be arrested or called back by a simple order of court.* If it could be, the law which limits the time within which an appeal can be taken would be a dead letter." *Credit Company Limited, v. Arkansas Central Railway Company*, 128 U. S. 258, 261. p. 144-5. Held that the time could not be extended by a petition for rehearing or by court's consideration thereof or order denying such petition

Wood v. Bailey, 88 U. S. 640-641.

The court says: "The failure to give notice to the other party *within the ten days*, whether claimant or assignee, *is equally fatal* to the appeal, as

the failure to give notice to the clerk that the appeal is claimed." p. 641.

Credit Co. etc., v. Arkansas C. Ry Co., 128 U. S. 258-261.

Brady v. Bernard & K., 170 Fed, (C.C.A.) 578.

If the appeal is not taken within the time limited, the appellate court will have no jurisdiction of the case and must dismiss the attempted appeal.

Conboy v. First Nat. Bank, 203 U. S. 141,144-5;
Credit Co. etc., v. Arkansas C. Ry. Co., 128 U. S. 258, 261.

Wood v. Bailey, 88 U. S. 640, 641.

Brady v. Bernard & K., 170 Fed. 575, 578.

In re Alexander, Fed Case No. 160 Vol. 1, the court says: "The regulation of appeal is a regulation of jurisdiction." Chase, J.

In re Kyler, Fed Case No. 7957;

In re Place Fed Case No. 11200;

Sedgwick v. Fridenberg, Fed Case No. 12611.

The construction of section 659 of the Code of Civil procedure relating to the giving of notice of intention to move for a new trial has become equally well settled in the following particulars:

A notice of intention to move for a new trial prematurely given is ineffectual for any purpose and must be denied. In *Crowther v. Rolandson*, 27 Cal. 385, the court construed section 195 of the Act of 1863 which provided that "When an action had been tried by the court, or by a commissioner or a referee," the party intending to move for a new trial should give a written notice thereof within ten days after necessary written notice of the findings of the judge, or the report of the commissioner or referee, and held that even if the court has filed its Findings of Fact, but has sent the case to a referee to take an account, a notice of intention to move for a new trial given before the filing of

the referee's report is premature. Prior to this the Court had held in constring an early Act providing for notice of motion for a new trial to be given after entry of judgment, that notice given one day before entry of judgment was premature and all proceedings upon the motion were void. (*Mahoney v. Caperton*, 15 Cal., 314). In *Bates v. Gage*, in an equity case, where special issues had been submitted to a jury and a finding had been made thereon, and later the Court rendered judgment, the court by McKinstry, J., held that a notice given before entry of judgment was premature for the reason that the verdict of the jury upon a portion only of the issues could be regarded only as a portion of the Findings of the Court, and that since "No motion for a new trial was made after the decision of the court below was rendered, an order denying the motion for a new trial must be affirmed." (Italics are ours.) In *Spotteswood v. Weir*, 66 Cal. 529, the Supreme Court of California expressed itself concerning a premature notice of motion for a new trial upon the authority of the last case referred to:

"The action here being on the equity side of the court, the verdict of the jury was but advisory; and until the findings of the jury were adopted by the court, there was no decision and therefore, nothing upon which to base a motion for a new trial. For this reason the notice given by the plaintiff April 9, 1881, was premature and ineffectual and was, therefore, properly abandoned." (Italics are ours.)

Careaga v. Fernald, 66 Cal. 351, was an application for a writ of mandamus to compel a referee to settle a statement on motion for a new trial. The findings of the referee together with the judgment were reported on January 9th, 1882, but by direction of the court they were not filed until the 8th day of September 1882. In the meantime and on February 13th 1882 the defendant gave notice of his intention to move for a new trial, concerning which proceeding Judge Ross said:

“The proceedings thus taken by defendant for the purpose of obtaining a new trial of the action having been taken before the findings and judgment were filed, were ineffectual for any purpose, as was held on appeal taken by the plaintiff in that action from an order made by the court based upon those proceedings granting a new trial. (*Harris v. Careaga*, 1 W. C. Rep., 467). Being ineffectual for any purpose they are to be laid out of consideration.” (Italics are ours).

Subsequent to the filing of the findings and judgment, and within the statutory time thereafter, the defendant duly served and filed his notice (another and later notice) of intention to move for a new trial and it was the statement in support of this motion which the referee refused to settle. The writ was allowed.

In *Harris v. Careaga*, the appeal was from an order overruling a motion to dismiss the motion for a new trial to which reference has just been made, and in reversing the order the court held that the giving of notice of intention to move for a new trial in the time, manner and form provided by law *was jurisdictional*. In rendering the decision Judge McKee says:

“On that day (September 8, 1882) the case was considered as tried to a legal intent; *Hastings v. Hastings*. 31 Cal. 95; the decision and judgment were then rendered, and for the first time had a legal existence, upon which the right to move for a new trial could be put in motion. *But the attempt to exercise the right before the decision was ineffectual for any purpose, and the proceedings under it were wholly insufficient as a basis for the motion.* In *Mahoney v. Caperton*, 15 id. 314, it was so held of a notice of intention given one day before the rendition of the judgment. And in *Flateau v. Lubeck*, 24 Id. 364, it was held that a stipulated statement could not be made the foundation of a motion for a new trial when no notice of intention

to move had been served and filed. So in *Bear River and A. W. & M. Co., v. Bowles*, *id.* 654, it is said: 'When no notice of intention to move for a new trial is given or waived, the making and filing of a statement does not give the court jurisdiction over the subject matter of a new trial, and an order granting a new trial will be reversed.' " (Italics are ours.)

In *Hinds v. Gage*, 56 Cal. 488 the court by Judge Myrick, Justice Sharpstein, McKinstry and McKee, concurring, (Justice Ross taking no part in the decision because disqualified) held, on the authority of *Crowther v. Rowlandson*, *supra*, that upon a showing of a premature notice of intention given after a decree dissolving a partnership but before the report of a referee appointed to take an accounting was filed, the appeal from the order denying the motion for a new trial would be dismissed.

In *Dorland v. Cunningham*, 66 Cal. 485, it was held by the court speaking through Justice McKinstry, Justice Ross and McKee concurring, *that there can be only one valid notice of intention to move for a new trial.*

In *Bell v. Marsh*, 80 Cal. 414; the court in construing Section 659 C. C. P. in connection with Section 856 C. C. P. which provides that "a new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury or court, or by referees," said:

"These two sections of the Code must be read together. No proceedings for a new trial can be had until 'after the trial and decision by a jury or court.' In equity cases the findings of the jury are merely advisory. *A case has NOT been tried until ALL the issues have been disposed of* and there has been no decision until the court has passed upon the facts, and drawn its conclusions of law therefrom. . . . To hold that the time to give notice of intention begins to run from the rend-

tion of the special verdict would necessarily put each party to the trouble, in the protection of his rights, of preparing and prosecuting motions for a new trial before either party knows what the decision of the court is to be."

In *Reclamation Dist. No. 556 v. Thisby* (1901) 131 Cal. 574, the court said of a premature notice of intention to move for a new trial:

"Although certain special issues were submitted to a jury, these issues formed only a portion of the controversy between the parties to the actions, and the remaining issues were tried by the court and findings of fact made by it thereon, upon which together with the answers of the jury to the questions submitted to them, the court rendered its judgment in favor of the plaintiff. The "actions" were therefore tried by the court, and under Section 659 of the Code of Civil Procedure until the court had rendered its decision, it was not competent for either party to give notice of intention to move for a new trial were given and filed November 1, 1897, while the decision of the court was not made until April 21, 1898. These notices were within ten days after the jury had given their answers to the special issues submitted to them, but as the 'actions' were not tried by a jury, the notices were premature *and gave to the court no power to act upon the motion which should thereafter be made under the notices.* (*Bates v. Gage*, 49 Cal. 126; *Bell v. Marsh*, 80 Cal. 411). No judgment could have been rendered in the case at the time the jury rendered its verdict, and the trial of the action was not concluded until the court had rendered its 'decision' upon all the issues submitted to it." (Italics are ours).

The court also quoted with approval from *Bell v. Marsh* to the effect that a case is NOT *tried until ALL the issues have been disposed of.*

This was the state of the case law of California with reference to the settled construction of the provisions of Section 659 of the Code of Civil Procedure relating to new trials, when the defendants in *Bell v. Staacke*, No. 2826, brought on for hearing their motion for a new trial on their notice of intention to move therefor which was given in March 1901, *more than two months before the filing of the additional findings filed on June 7th 1901*, and the trial court properly denied the motion. It had no power or jurisdiction over such a motion other than to deny it, and never thereafter had any power or jurisdiction as the time to serve such notice of intention to move for a new trial expired on or about the 18th of June 1901; neither it nor the Supreme Court could thereafter have any power or jurisdiction to order a new trial in said action and any judgment or order purporting to do so was absolutely void for want of jurisdiction. The decision as completed on June 7th 1901 by the filing of the additional findings became final and could not be changed after the time to serve any notice of intention to move for a new trial expired, for all power and jurisdiction was then terminated and lost. The judgment also became and was final on the 9th day of January 1909, as no valid appeal had been or was ever taken from it.

When a court is without jurisdiction of the subject matter and the parties or of either, every judgment, decree or order made by it is absolutely void and a mere nullity, whether the court be a nisi prius court or appellate court, and any such judgment, decree or order may be attacked collaterally.

Rose v. Himely, 4 Cranch 241;
Griffith v. Frazier, 8 Cranch 9;
Elliott v. Peirsol, 1 Pet. 328;
Voorhees v. Jackson, 10 Peters 449;
Shriner v. Lynn, 2 How. 43;
Hickey v. Stewart, 3 How. 750;
Williamson v. Berry, 8 How. 495;
Galpin v. Page, 18 Wall 350;

Hamilton v. Brown, 161 U. S. 256;

Distinction between error in judgment and usurpation of power is definite; the one denotes cases where a judgment is reversible by the appellate court, the other where it may be declared a nullity collaterally.

Voorhees v. Jackson, *supra*.

The doctrine that a judgment in a case of which the court has once acquired jurisdiction cannot be collaterally assailed is only correct when the court proceeds after acquiring jurisdiction according to established modes governing the class to which the case belongs and does not transcend, in the extent or character of its judgment, the law which is applicable to it; *where the court transcends the limits of its authority, its judgment is not merely erroneous, but is void.*

Winsor v. McVeigh, 93 U. S. 274;

Bruner v. Superior Court, 92 Cal. 262;

Long v. Superior Court, 102 Cal. 452;

Ex parte Giambonini, 117 Cal. 576;

Wilson v. Walker, 109 U. S. 258, 3 Sup. Ct. Rep. 277;

Bigelow v. Forrest, 9 Wall. 339;

Wilson v. Walker, 109 U. S. 258, 3 Sup. Ct. Rep. 277;

Bigelow v. Forrest, 9 Wall. 339;

Re Terry, 128 U. S. 289, 9 Sup. Ct. Rep. 77;

It is admitted by the answers of all the defendants in the suit at bar that the defendants in *Bell v. Staacke* had notice of said additional findings on or *before* July 9th 1901, and as they have not stated particularly the date of such notice, the presumption is that they had such notice when they were filed on June 7th 1901.

Where a party has actual notice of the decision of the trial court no formal service of a written notice of the decision is necessary and the right to

move for a new trial is lost unless notice of intention to move for a new trial is served and filed within ten days after such actual notice of the decision.

Gray v. Winter in Bank, 77 Cal. 525;
Mullally v. Irish Am. Ben. Soc., 69 Cal. 559;
Wall v. Heald, 95 Cal. 562;
Dow v. Ross, 90 Cal. 562;
Calif. Imp. Co. v. Barotean, in Bank, 116 Cal.
 at pages 138-139;
Estate of Keating, in Bank, 158 Cal. 115-116;

This was also the well settled state of the law upon the subject of motions for a new trial when the plaintiff's predecessors in interest moved to dismiss the appeals from both the judgment and the order denying defendants' motion for a new trial. The motion to dismiss the appeal from the judgment upon the ground that the notice of appeal was premature was allowed; but, without expressly overruling *Hinds v. Gage*, 56 Cal. 486, and *Harris v. Careaga* 1 W. C. Rep. 467—2 Cal. Unrep. Cas. 242, the court held that "The premature service of a notice of intention to move for a new trial, might be a good reason for denying the motion, but, does not deprive this court for its dismissal upon the ground that the court has not jurisdiction to hear it." (*Bell v. Staacke*, 137 Cal. 308).

Therefore, when in the interval between the decision denying the motion to dismiss the appeal from the order denying defendants' motion for a new trial and the decision upon such appeal, the complainant herein, U. S. Oil and Land Company, a citizen and inhabitant of the Territory of Arizona, could well afford to purchase the interest, which it now claims in the 10,067.2 acre tract in controversy here, upon its faith in the settled doctrine established by the Supreme Court of California "that a premature notice of intention to move for a new trial was ineffectual for any purpose," and was "a good reason for denying the motion;" the

later principle being tacitly admitted by the Supreme Court in its decision denying appellant's motion to dismiss the appeal in the particular case of *Bell v. Staacke*, and the merits of which were yet to be decided confessedly according to *the settled construction* which theretofore obtained with reference to section 659 of said Code of Civil Procedure.

The foregoing statement presents a condition of affairs that gave rise to a rule of practice in the Federal Courts of the United States,, established by the leading case of *Gelpcke v. Dubuque*, 1 Wall. 175. While it was first thought that the rule then established, would prove exceptional in the strictest sense of the word. The principle and rule maintained in the case, viz: that in the interest of justice and on behalf of a citizen of another state the Federal courts *will not be bound* by the latest decision of a state tribunal construing its own constitution and laws when that decision has been arbitrarily or capriciously made against the law or equity of the particular case, has become well settled by a long line of ably considered Federal court decisions.

The genesis of the doctrine declared in *Golpcke v. Dubuke*, which was to become a recognized rule of decision, is to be found in the case of *Rowan v. Runnels* 5 Howard 138, which was a case where the plaintiff had acquired rights before any state decision had been made. The supreme court of the United States laid down the doctrine contended for by the plaintiff following which there was a decision by the state court the other way. The supreme court of the United States was then asked to depart from its former ruling and follow the state decision. In refusing to do so Chief Justice Tawney said:

“Acting under the opinion deliberately given by this court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to decisions since made in the state

and declare contracts to be void which, upon full consideration, we have pronounced to be valid. Undoubtedly this court will always feel itself bound to respect the decision of the state court, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws. *But we ought not to give them a retroactive effect and allow them to render invalid contracts entered into with citizens of other states, which, in the judgment of this court were unlawfully made. For, if such a rule were adopted, and the comity due to state decisions pushed to this extent, it is evident that the provision in the Constitution of the United States which secures to the citizens of another state a right to sue in the courts of the United States might become utterly useless and nugatory.*" (Italics are ours)

The question as to what position the Supreme Court of the United States would take when called upon to decide a point of construction under a state constitution or law, the state decisions being conflicting, then arose in the case of *Ohio Life & Trust Co. v. Debolt*, and Chief Justice Tawney said:

That if a contract made was valid by the laws of the state, as then expounded by all the departments of its government and administered in its court of justice, *its validity and obligation cannot be impaired by any subsequent act of the legislature of the state, OR DECISIONS OF ITS COURTS ALTERING THE CONSTRUCTION OF THE LAW.*" (Italics are ours)

The significance of *Gelpcke v. Dubuque*, following these cases lies in fact that in a case of first impression in the Supreme Court of the United States, between citizens of different states, it will *not* follow the latest decision of the highest court of a state construing its constitution or laws as against the settled rule of

decision theretofore established by the courts of such state in consonance with justice and the law as to transactions affected by such rule of decision, had before the date thereof.

The Supreme Court of Iowa had repeatedly upheld as constitutional the right of the legislature to authorize municipal corporations to issue bonds in aid of railroads, and the bonds the validity of which was attacked in *Gelpcke v. Dubuque*, had been issued, while this was regarded as a true interpretation of the constitution and laws of that state. At the time of the decision in *Gelpcke v. Dubuque* the Supreme Court of Iowa in a different unrelated case had held against the validity of similar bonds upon constitutional grounds. In holding the later decision could have no effect upon transactions in the past, however, it might affect those in the future, Justice Swayne said, after quoting from the case of the *Ohio Life & Trust Co. v. Debolt* as above set forth:

“The same principle applies where there is a change of judicial decision as to the constitutional power of the legislature to enact a law. *TO THIS RULE, THUS ENLARGED, WE ADHERE. IT IS THE LAW OF THIS COURT. IT RESTS UPON THE PLAINEST PRICIPLES OF JUSTICE. To hold otherwise would be as unjust as to hold that rights acquired under the statute may be lost by its repeal.* The rule embraces this case.

. . . . It is the settled rule of this court in such cases to follow the decisions of the state court but there has been heretofore in the judicial history of this court, as doubtless there will be hereafter, many exceptional cases. *We shall never immolate truth, justice and the law, because the state tribunal has erected the alter and decreed the sacrifice.*” (Italics are ours.)

Gelpcke v. Dubuque, was soon after directly affirmed *Havemeyer v. Iowa*, 3 Wall. 303 and *Thompson v.*

Lee County, 3 Wall. 331. The authority of these cases was strengthened and the limits of the application of doctrine of the independence of the Federal courts in cases depending solely upon diverse citizenship greatly extended by the decision in the case of *Burgess v. Seligman* 107 U. S. 20, 33-34. In that case it appeared that there was no decision of the state court controlling the validity of the contract in controversy at the time it was made, but that while the validity of the contract was *sub judice* in the Federal Courts in the principal case, the Supreme Court of Missouri on the questions involved therein, and in the very transactions then engaging the attention of the Supreme Court of the United States had reached a contrary conclusion to that reached in the Circuit Court. In affirming the judgment of the latter Court, the Supreme Court of the United States speaking through Justice Bradley said:

“We do not consider ourselves bound to follow the decision of the state court in this case. When the transactions occurred, and when the case was under the consideration of the Circuit Court, no construction of the statute had been given by the state tribunals contrary to that given by the Circuit Court. *The Federal Courts have an independent jurisdiction in the administration of state law, coordinate with, and not subordinate to that of the state courts, and are bound to exercise their own judgment as to the meaning and effect of those laws.* The existence of two co-ordinate jurisdictions in the same territory is peculiar and the results would be anomalous and inconsistent but for the exercise of mutual respect and deference. Since the ordinary administration of law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal

Courts no less than by the state courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled it is the right and duty of the Federal Courts to exercise their own judgments; as they always do in reference to the doctrine of commercial law and general jurisprudence.

So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or there has been no decisions of the state tribunals, the Federal Courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the state courts after such rights have accrued."

In *Jones v. The Great Southern Hotel Co.* 86 Fed. 370, the Supreme Court of Ohio had held the provisions of a mechanics' lien law invalid upon constitutional grounds in another case after the rights of the lienors had accrued under the law, and the *Circuit Court of Appeals* refused to follow the decision of the state court upon the authority of the foregoing cases.

In the case of the *Southern Pac. R. R. Co. v. Orten*, 6 Sawy. 195, 32 Fed. 372, Judge Sawyer sitting in the Circuit Court for the Ninth Circuit had to consider the question arising under the constitution of California upon which there were two conflicting decisions in the state court, and held in favor of the rule established by the earlier decision which had been acquiesced in some eleven years before the later decision was announced, and based his ruling upon the ground that the act, the validity of which was in question and by reason of which the defendant's right had become vested, was passed and acted upon by the parties while the earlier decision was in force.

The law of *Gelpcke v. Dubuque*, has been applied by a number of the states in support of the doctrine that a settled rule of decision enters into and becomes a part of a contract at the time that it is made. The Alabama court has said:

“It may be said to be a dormant stipulation of the contract and *it must be enforced as a part of it, and as it is construed at the time of entering into it.*”

Napier v. Jones, 47 Ala. 96.

The same court has refused to give effect to its own later decision where to do so would cause them to operate retroactively and invalidate a conveyance by a husband to his wife which was good under its former decision at the time it was made.

Farrior v. New England Mortg. Sec. Co., 92 Ala. 175

The Indiana Supreme Court upon the strength of the rule contended for here has refused to give retroactive effect to the later decision changing the rule of descent, *when to do so would invalidate deeds made*, and limits the quality and quantity of the estates acquired under the rule of earlier decisions.

Stevenson v. Bordy, 139 Ind. 65-66;

Haskett v. Maxey, 134 Ind. 183.

Other cases that may be cited in support of the same general principle are *Hall v. Wells* 54 Miss. 301-302; *Hemden v. Mowe*, 15 S. Car. 354-455; *State v. Comptoir National D'Escompte de Paris* 51 La. Ann. 1278; *Long v. Walker* 105 N. Car. 90.

The case of *Muhlker v. N. Y. etc. R. R. Co.*, 197 U. S. 54,449 L. Ed. 873-878, was before the Supreme Court of the United States upon writ of error of the Supreme Court of the State of New York and brought directly before the court for decision the question of the controlling influence of a decision of the state court and its effect upon plaintiff's rights acquired by contract. Upon the facts of the case the court proceeded in a direct line to establish the doctrine that a state may not impair rights arising out of a contract by reversing decisions of its courts in cases establishing the law of such contracts at the time they were entered into. In reaching this result the court said:

“When the plaintiff acquired his title those cases were the law of New York, and assured to him that his easements of light and air were secured by contract as expressed in those cases, and could not be taken from him without payment of compensation.

“And this is the ground of our decision. We are not called upon to discuss the power, or limitations upon the power of the courts of New York to declare rules of property or change or modify their decision, but only to decide that *such power cannot be exercised to take away rights which have been acquired by contract and have come under the protection of the Constitution of the United States. And we determine for ourselves the existence and extent of such contract.* This is a truism; and when there is a diversity of state decisions the first in time may constitute the obligation of the contract and measure the rights under it. Hence the importance of the Elevated Railroad Cases and the doctrine they had pronounced when the plaintiff acquired his property.”

The true significance of this decision cannot be entirely understood separate and apart from the vigorous dissenting opinion of Mr. Justice Holmes.

The latest expression of the court upon this subject was in a case which runs true to the earlier cases, like the suit at bar; and the decision was rendered on a certificate from the United States Circuit Court of Appeals for the Fourth Circuit, in an action of trespass on the case between citizens of different states. The question presented was whether the Federal Courts are bound by a decision of the highest state court on the question of subsequent support, handed down after the rights of the parties were fixed. In assuming in the negative the court affirms *in toto* the doctrine laid down in *Burgess v. Seligman* in the words already quoted from that decision, and against the strong dissent of Mr. Justice Holmes, establishes the rule that in

the absence of any prior decision of the state court fixing the rights of the parties under a contract, the Federal Courts are not bound to follow a later decision of the state court, but may give effect to its own judgment as to what was the law of the state applicable to the contract when the rights under it accrued. The dissenting opinion concedes, however, the rule of *Gelpcke v. Dubuque* that settled decisions of state courts "make law for the state," and that "The principle is that a change of judicial decision after a contract has been made upon the faith of an earlier one is a change of the law."

This is indubitably the law of the suit at bar; and, we respectfully submit, this court will not concern itself with the decision of the Supreme Court of California in *Bell v. Staacke*, 141 Cal. 186, further than to note that in disposing of the respondent's "preliminary" contention that the defendants' motion for a new trial was properly denied by the lower court "because the notice of intention to move for a new trial was prematurely given," the court ignores its previous decisions to the contrary, and cites no authority for its later unique, exceptional and solitary decision. This later unique decision in *Bell v. Staacke* in conflict with all previous decisions was rendered on November 30th, 1903, and between the date thereof and March 20th, 1907, when section 659 of the Code of Civil Procedure was so amended as to provide that "The party intending to move for a new trial must within ten days *after receiving notice of the entry of the judgment*, file with the clerk and serve upon the adverse party a notice of his intention, etc., etc.," It does not appear that the decision reported in 141 Cal. has ever been referred to as authority to sustain its unique and exceptional ruling that the fact of a premature notice of intention to move for a new trial may be disregarded. It does not appear that the question has ever been raised since section 659 was amended.

POINT 6.

THE PURPORTED JUDGMENT AND ORDER OF SALE ENTERED UPON THE SO-CALLED TRIAL OF *Bell v. Staacke*, No. 2826 IS VOID, AND THE DEFENDANT TERESA BELL AS ADMINISTRATRIX TOOK NOTING THEREBY OR UNDER THE COMMISSIONER'S DEED PURPORTING TO CARRY THE TITLE TO THE 10,000 ACRE TRACT.

After entertaining jurisdiction of the appeal from the order denying defendants' motion for a new trial, the Supreme Court of California in *Bell v. Staacke*, 141 Cal. 186, 195 et seq. held that upon the conveyance of the 10,000 and 4,000 acre tracts to Staacke by Grover and Rosener by deed of March 7, 1889, the evidence did not sustain the finding that a lien was not created upon the 10,000 acre tract in favor of Thomas Bell, and upon that ground made the order purporting to reverse the order denying a new trial.

It is an admitted fact by the pleadings in the suit at bar that subsequently to the conveyance to Staacke by which the mortgage lien that was sought to be foreclosed upon the purported second trial of action No. 2826, but prior to the commencement of that action, to-wit by a grant dated February 1, 1892 and recorded on February 3, 1892, Staacke conveyed by deed of trust, the legal title of the 10,000 acre tract to Campbell and Kent, as trustee to secure the loan evidenced by the note of Thomas Bell and Staacke for \$60,000. It is also admitted that neither the trustees above named, nor their successors nor the Savings Union were parties to the action No. 2826.

In California it has been the law ever since the decision of *Koch v. Briggs* and on down to the decision in *Weber v. McCleverty*, 86 Pac. 706, that a deed of trust of real estate taken as security for the loan of money, *conveys the legal title and vests the grantee with all interest in the land, which remains until the trust*

is executed or is terminated by payment. (See points and authorities.)

By an equally long and unbroken line of decisions commencing with *Boggs v. Fowler*, 16 Cal. 559, 76 Am. Dec. 561, it has been a settled rule of law in California as elsewhere under the "lien theory" of mortgages that a foreclosure suit is only a proceeding *for the legal determination of the existence* of a lien, the ascertainment of its extent, and the subjection to sale be heard; and to give validity to a foreclosure decree, of the estate pledged; that upon the validity and extent of that lien the mortgagor or his grantee, has a right to the owner of the legal title of the premises is an indispensable party, *and no valid order of sale can be made in any such suit to which he is not a party.*

That the title to mortgaged premises are wholly unaffected by such a sale is shown by the decisions.

Carpenter v. Williamsen, 25 Cal. 154 is to the effect that where a purchaser at a mortgage sale acquires no title for failure to make the grantee of the mortgagor a party to the foreclosure, the mortgage, decree of sale, and sheriff's deed are not relative testimony to show title in the purchaser at the sheriff's sale.

In *Skinner v. Buck*, 29 Cal. 253-257 in construing section 309 of the Practice Act which provided in part that "The creditor may maintain his action against the mortgagor alone", the court said: "the main and only purpose of the section was to save foreclosure suits from abatement on the ground of non-joinder of incumbrances whether prior or subsequent. Morehead was not an incumbrancer but the absolute owner of the mortgaged premises in so far as it was covered by his deed from Ruckel. Though not 'mortgagor' yet he stood in the mortgagor's shoes. The purpose of the section was that the owner of the mortgaged premises, at least, should be made a defendant in foreclosure, and the 'mortgagor' is put in by way of sample or illustration. Otherwise, we are driven to the some-

what startling conclusion, that it was the intention of the Legislature, in case the mortgagor should convey the whole of the mortgaged property, not only that the suit to foreclose might be brought against the 'mortgagor alone', but that the decree obtained in the action should find his grantee as implicitly as if his name and interest had been represented upon the record."

In a note to *Berlack v. Halle*, 22 Fla. 236, 1 Amer. St. Rep. 185,189, the learned editor of the latter reports says in connection with the rule making a subsequent grantee of a mortgagor an indispensable party to foreclosure:

"In many of the states the effect of a mortgage as a conveyance of the legal title has been destroyed by exactments which convert it into a mere lien upon the the property. The obvious consequences of the retention of the legal title of the mortgagor is his ability to convey such title at his pleasure. It is true that the title is still subject to the mortgage lien, but when the lien is to be made effective by proceedings to appropriate the title to its satisfaction, *there can be no question that such title can be reached only by some proceeding directed against the party by whom it is held.* It is incomprehensible that any person should have concieved the idea that the title could be divested under foreclosure proceedings against the mortgagor, *commenced at a time when he retained no interest in the property, and the proper evidence of his transfer was upon the records of the county in which the land was situate.* Yet, at least in some of the states, the early foreclosure proceedings very generally ignored transfers made subsequent to the mortgage and prior to the institution of such proceedings. It is clear that an execution or judicial sale can have no greater operation than could a conveyance of the property, executed by all the parties at the commencement of the action or proceeding. What they can not do voluntarily, they cannot be made to do by compulsion. The conveyance, though executed by an officer of the law or of the court, is, nevertheless, in

legal contemplation, their conveyance, and theirs alone. Hence it can not divest the estate of their grantees by grants duly executed and recorded prior to the pendency of the suit''. (citing *Goodman v. Ewer*, *Boggs v. Hargrave*, *San Francisco v. Lawton*, *supra*).

Another and controlling principle of law rendering the San Francisco Savings Union and their trustees as indispensable parties to action No. 2826 is applicable to and arises out of the admitted fact in the suit at bar that the San Francisco Savings Union and its trustee *were purchasers for value and without notice of the equitable title of John S. Bell* to said 10,000 acre tract. This fact was conclusively established by the decree in action No. 4424, is affirmatively alleged in the answers of the defendants, Teresa Bell, as administratrix etc., and of the defendants Hammon and Van Deinse, and binds all the parties to the present litigation. The principle referred to is that purchasers for value of trust property, and without notice, take a perfect title, discharged from the trust and from all equitable claims and so that no outstanding estate of any kind, legal or equitable, is left.

Civil Code sec. 2243;

Paige v. O'Neal, 483-498-499

Ricks v. Reed, 551-577;

Warnock v. Harlow 298-306 *et seq.*;

Moore v. Crawford, 130 W. S. 122;

Pomeroy's Eq. Jurisprudence, sec. 1053.

Any of the foregoing considerations singly, to say nothing of them in combination, would be sufficient ground upon which to hold the pretended second judgment and order of sale in action No. 2826 void for want of jurisdiction of the subject matter of the attempted foreclosure then sought to be obtained on a cross-complaint. That Staacke had no interest in the 10,000 acre tract which could be made the subject of foreclosure and sale was definitely determined by the findings in all the actions referred to in the pleadings in the suit at bar, as well as by the Supreme Court of

California in its decision on affirming the decision in *Bell et al v. San Francisco Savings Union*.

Staacke, under the agreement between John and Thomas Bell, as merely a naked trustee of the legal title, but by and under the *record, title and conveyances* he was the absolute owner in fee with no outstanding right, title, interest or equity in any other person,—and as such absolute owner in fee he deeded and conveyed all the title and interest that he had to the trustees of the San Francisco Savings Union, who as bona fide purchasers for value without notice took, received and held the absolute and whole title in fee free from every title, right or claim, legal or equitable, of John S. Bell and Thomas Bell. Nothing was then left in either John S. Bell or Thomas Bell, and nothing could have been left in Staacke as he never had anything but the naked legal title and all of the legal title passed out of and from him to the trustees of said San Francisco Savings Union.

It is important to call the attention of the court at this time to the fact that notwithstanding the trial judge dismissed the suit at bar upon the theory that all the questions raised by the pleadings had been adjudicated and were conclusively determined by the judgments in actions No. 2826 and No. 4424 and by the final determination of the appeals therefrom by the Supreme Court of California, that neither the effect of said judgment and order of sale entered upon the second trial of action No. 2826, nor the point which we will next make to the effect that the judgment in action No. 4424 is the last and controlling adjudication of the rights of all the parties to the litigation, past as well as present, have been passed upon by any court or courts whatever, and that these two questions are here first presented in any court for hearing, trial or adjudication.

POINT 7.

THE DECREE IN *Bell v. San Francisco Savings Union et al*; action No. 4424 IS VALID AND CONTROLLING AS A FINAL AND CONCLUSIVE DETERMINATION OF THE RIGHTS OF ALL THE PARTIES TO *Bell v. Staacke*, action No. 2826, AND ALSO OF THE STATUS OF THE SAN FRANCISCO SAVINGS UNION AND OF ITS TRUSTEES AS PURCHASERS FOR VALUE AND WITHOUT NOTICE.

Bell v. Savings Union was brought after the commencement and before the trial of *Bell v. Staacke*. The parties to *Bell v. Staacke* were all of them parties to *Bell v. San Francisco Savings Union*, and the San Francisco Savings Union and its original trustees as well as their successors, were parties only to and in the later action. *The findings of fact and conclusions that the issues therein, though they are broader than those raised in Bell v. Staacke, included all those passed upon and decided on the trial and on the pretended several trial of Bell v. Staacke—* that each and all of of the material facts and issues raised in *Bell v. Staacke* were again involved, pleaded and tried in *Bell v. San Francisco Savings Union et al*,—that the decision thereof was necessary to give force and effect to the judgment in *Bell v. San Francisco Savings Union*— that all of said issues were tried and adjudicated as issues involved and to be decided in said later suit in which all parties interested were brought in,— and that in said later suit said court with a mere mention of the pendency of the former suit of *Bell v. Staacke* adjudicated conclusively the status of Staacke as trustee of the trusts created by the deed of Grover and Rosener of March 7th 1889. The court in finding 40 (Tr. p. 71) merely states: “That said action so commenced on the 8th day of March, 1893 by said John S. Bell against said defendant George Staacke and said executors at that time of the last Will and Testament of Thomas Bell, deceased, is still pending in this court and is num-

bered 2826 in the register of actions and proceedings in the office of the clerk of this court and the relations between said John S. Bell and his grantees of said first above-described of said two several tracts of land on the one hand and said defendants George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, on the other hand in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect of said first above-described of said two several tracts of land and all or any parts thereof are involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein. The court then finds as a conclusion of law that the grant in trust by Staacke to Campbell and Kent "is a good and valid grant of the piece or parcel of land therein described upon the trusts therein mentioned, whereof said defendant Mercantile Trust Company of San Francisco is now the trustee and that this court *having been vested by this action* with jurisdiction with respect to said two several tracts of land for the purposes of determining the issues raised herein by the complaint of said plaintiff and the answers thereto retain said jurisdiction for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land". Even if the language in said finding 40 could be construed to be an attempt to except the decision in *Bell v. Staacke* from the decision in the later suit which cannot be done under the rule of *expressio unius est exclusio alterius*, the findings in *Bell v. San Francisco Savings Union* would limit the effect of the judgment in *Bell v. Staacke* to determining only "the relations between John S. Bell and his grantees of the first of the above-described several tracts of land (the 10,000 acre tract) on the one hand, and the said defendants George Staacke and Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, with the will annexed, on the other hand in respect to said indebtedness of John S. Bell to said Thomas Bell and in respect of said first above-described of said two several

tracts of land and all and any parts thereof were involved in said action and constituted the subject matter thereof” (Findings of Fact No. 40 Tr. p. 71), and any idea that the judgment and order of sale thereafter to be made in *Bell v. Staacke* would control the title to the 10,000 acre tract to be disposed of under the judgment and deed of trust in *Bell v. Savings Union*, was completely negated by the order contained in the latter judgment requiring the land to be sold according to the provisions of the deed of trust, and directing that the balance of the proceeds of the sale remaining after payment of the indebtedness secured to the Savings Union and the expenses of the trust, should be paid “to said defendant, George Staacke, his heirs or assigns, etc., (meaning successors).

The judgment in *Bell v. Savings Union* was entered on the 14th day of March 1905, the decision having been rendered also on that date. The pretended judgment on the purported second trial of *Bell v. Staacke* was entered on October 28th 1904, the decision having been rendered on the 17th day of October 1904. The pretended second judgement in *Bell v. Staacke*, if the court had jurisdiction to make it, became final February 2, 1906 or thirty days after the dismissal of the appeal from the judgment (*Bell v. Staacke*, 148 Cal. 404) and the judgment in *Bell v. San Francisco Savings Union et al* became final thirty days after February 14th, 1908, the date of the affirmance thereof by the supreme court. (*Bell v. Savings Union*, 153 Cal. 64)

The judgment in *Bell v. Savings Union* is unquestionably the latest and controls the parties upon all issues litigated therein which were common to that action and the action of *Bell v. Staacke*.

If rights under former judgments are to be relied upon they must be pleaded in bar and given in evidence, and in the absence of such practice the later judgment controls the former.

Freeman on Judgments, Sec 332;
Simple v. Wright, 32 Cal. 659;

Simple v. Ware, 42 Cal. 619

Cooley v. Brayton, 16 Iowa 10.

Under the Code practice in California a former judgment must be pleaded in bar under the requirement that the answer of the defendant, in every case, must contain a statement of "any new matter constituting a defense."

Black on Judgments, Sec. 789;

Piercy v. Sobin, 10 Cal. 22-70 Amn. Dec. 692.

And a former recovery, whether obtained *before or after the joining of the issue*, cannot be given in evidence, in any action whatever, under a general denial of the allegations of the complaint *or under an allegation in the answer, of the pendency of the action where in the recovery was had.*

11 Black on Judgments, Sec. 789

Henricks v. Decker, 35 Barf. 299;

Brazill v. Isham, 12 N. Y. 9.

The rule emphasized above has been established with peculiar force in California, and the practice whereby a judgment to be entered in a pending action between the same parties and concerning the subject matter, may be used as evidence in an action commenced later in point of time has been definitely settled. Under such circumstances in California, the pendency of the former action *must be pleaded in abatement until the judgment to be entered therein, has become final* for until then the judgment can not be used as evidence.

Brown v. Campbell, 110 Cal. 645-650;

Harris v. Barnhart, 97 Cal. 551;

Brown v. Campbell, 100 Cal. 635;

In *re. Blythe*, 99 Cal. 472, a failure to plead the judgment and give it in evidence operated as a waiver of the rights or the estoppel claimed under it.

11 Black on Judgments, Sec. 786;

Simple v. Ware, *supra*;

Simple v. Wright, *supra*;

Rohms v. Minis, 40 Cal. 421;

Tyrell v. Baldwin, 67 Cal. 1-5;
Harris v. Barnhart, 97 Cal. 546;
Noftzger v. Gregg, 99 Cal. 83;
Estate of Blythe, 99 Cal. 472;
Brown v. Campbell, 100 Cal. 646;
McLean v. Baldwin, 136 Cal. 565-69.

Under the doctrine of these cases it becomes clearly evident that the Finding No. 40 in *Bell v. Savings Union*, relative to the pendency of the former action is not predecated upon any issue joined upon the fact of a former adjudication between the same parties, which would bar the recovery in *Bell v. Savings Union*, or which would operate as an estoppel against any of the parties to the last mentioned action; but on the other hand that finding, *ex proprio vigore* negatives such a presumption of fact.

Referring to the sequence of events connected with the trials, the decisions and the final judgments in the two actions, and bearing in mind that the decree in *Bell v. Savings Union* was not made until the 14th day of March, 1905, the defendant, Teresa Bell, as administratrix, etc., and the other defendants, had ample time following the entry of the pretended judgment in *Bell v. Staacke*, of October 28 1904, within which to move to vacate and set aside the submission of the cause in *Bell v. San Francisco Savings Union et al.*, and for leave to file a supplemental answer setting up her pretended judgment and order of sale and to demand an abatement or continuance of the later action until the purported judgment became final, thereby asserting or attempting to fix her status as the person claiming to be the lawful redemptioner under the deed of trust from Staacke to Campbell and Kent, trustees of the San Francisco, Savings Union; instead of doing this, however, *she waived her rights*, (if any she had) *thereunder and under any estoppels created thereby and allowed the court to enter a judgment recognizing "Staacke his heirs and assigns" (successors) to be the only true redemptioner from any sale made in pursu-*

ance of said trust deed, or under its decree in said suit of *Bell et al., v. San Francisco Savings Union et al.,*

How completely the said defendant Teresa Bell as administratrix etc., waived her rights (if any she had) to any relief under the said purported judgment and order of sale in *Bell v. Staacke*, not only in *Bell v. San Francisco Savings Union*, but also in the suit at bar is shown by the fact that it nowhere appears that she ever pleaded the pendency of the former action of *Bell v. Staacke*, in abatement of *Bell v. San Francisco Savings Union* or any exception to any erroneous ruling of the court refusing to make any order of abatement or continuance, or that there was ever such ruling. Failing to have taken these precautions she cannot now be heard to urge said purported judgment and order of sale in *Bell v. Staacke*, either as an estoppel or as an adjudication of any fact or issue decided in the later suit of *Bell v. San Francisco Savings Union et al.,*

Upon this point and question the Supreme Court of California in the analogous case of *Brown v. Campbell*, 100 Cal. 647 said:

“But while the judgment in *Priest v. Brown*, was not for the reason stated (that it had become final) a bar to the cause of action alleged in the cross-complaint, still the pendency of that action would have been good ground for the continuance of this until the final determination of the former action, or would have been a sufficient basis for an order dismissing the present action upon the motion of the plaintiff, notwithstanding the affirmative relief demanded by the defendant Priest in his cross-complaint and the refusal of the Court to have granted either of such motions would, perhaps, have been erroneous; but no such motion was made by the plaintiff still insisting upon the judgment in *Priest v. Brown et al.,* as an estoppel and as grounds for a judgment in his favor. Under these circumstances we cannot say that the court erred in proceeding to the trial, although it might

well have continued the case on its own motion until the final determination of the former action.” (the *Italics* are ours).

Brown v. Campbell, 100 Cal. 647.

In the trial of said suit of *Kate M. Bell et al.*, v. *San Francisco Saving Union et al.*, in which there were other and additional parties to those in the suit of *Bell v. Staacke* and in which the U. S. Oil and land Land Company was for the first time a party in or to any suit or litigation affecting the property and was brought in by the cross-complaint of defendants as a defendant to said cross-complaints, it became necessary and it was the duty of the court upon the allegations of said cross-complaints filed by said San Francisco Savings Union and by its trustee, Mercantile Trust Company of San Francisco, and by said Teresa Bell as such administratrix, to find the facts and make its decision upon all the issues raised by said cross-complaints and the answers thereto as well as all issues raised by the complaint and to decide what disposition, should be made of the surplus proceeds of the sale of said 10,067.2 acre tract, as the said cross-complainants alleged at length the trust and the trust deed executed by said Staacke to Campbell and Kent and prayed that the court would direct the execution of the trust created by said deed. The court in said suit of *Bell et al.*, v. *San Francisco Savings Union et al.*, could do this and so decide and direct only upon the evidence legally before it, and that evidence did *not* include said purported judgment and order of sale claimed by defendants to have been made and entered on October 2nd 1904 in said action of *Bell v. Staacke*; and therefore, the judgment and decree in *Bell et al v. San Francisco Savings Union et al* directing the payment of such surplus proceeds “*to said defendant George Staacke, his heirs or assigns*” can have no possible reference to any right, title, interest or estate claimed by said Teresa Bell as such administratrix or by any of the defendants to said suit of *Bell v. San*

San Francisco Savings Union under said purported or pretended judgment and order of sale in *Bell v. Staacke*. A reference to the Findings of Fact Nos. 24-31 (Tr. pp. 53-65) in said suit of *Bell et al v. San Francisco Savings Union* will show the trust upon which the surplus proceeds over and above all moneys due the San Francisco Savings Union were ordered and adjudged in and by the decree in said suit of *Bell et al v. San Francisco Savings Union et al* to be paid to "George Staacke his heirs or assigns." Said provision in said decree requiring the payment of such surplus proceeds to be made to "George Staacke his heirs or assigns" is taken and derived, like all of the other provisions of said decree relating to the sale of said 10,067.2 acre tract, directly from the deed of trust made by said Staacke to Campbell and Kent, and is of absolutely no significance as to any pretended right, title or interest of any of the defendants or of said Teresa Bell as such administratrix or of any pretended claim or right on her part as a purported purchaser under such pretended judgment and order of sale in *Bell v. Staacke*; but on the other hand, it clearly establishes decisively the character of the interest which said Teresa Bell as such administratrix received and now holds any title or right to said 10,067.2 acre tract under the purported conveyance thereof made and executed to her by said Mercantile Trust Company and said San Francisco Savings Union, namely, that of an involuntary trustee standing in the shoes of said trustee Staacke and under the obligation to administer and execute the trust created in and by said trust deed of Grover and Rosener to said Staacke, and upon exactly the same terms and conditions with respect to the land itself as were found and decreed by the court in said suit of *Bell et al v. San Francisco Savings Union et al*, with reference to such surplus proceeds as might arise from the sale of said 10,067.2 acre tract when made under and in pursuance of said decree and in accordance therewith and with the terms of said trust deed executed by Staacke to Campbell and Kent.

The net result to the complainant in this suit must be the same whether this court holds the said pretended decree and order of sale in *Bell v. Staacke* valid to pass the whole and only interest Staacke had in said 10,067.2 acre tract as trustor under said deed in trust to Campbell and Kent, viz.: the right to have the legal title thereto reconveyed to him upon the payment of the debt to the San Francisco Savings Union or to the surplus proceeds arising from any sale under said trust deed executed to Campbell and Kent and the right in case of such payment to have the equitable titles thereby revived in John S. Bell or his grantees,—or whether it holds, as we contend, that the court in *Bell v. Staacke* was without jurisdiction over the subject matter and also without jurisdiction to make, render or enter any such pretended judgment and order of sale, and that Teresa Bell as such administratrix by paying the amount of indebtedness adjudged and decreed in *Bell et al v. San Francisco Savings Union et al* to be due to the San Francisco Savings Union and secured by both of said tracts of land became an involuntary trustee of the trusts as to said 10,067.2 acres under said deed executed by Grover and Rosenor to said Staacke. The decree in said suit of *Bell et al v. San Francisco Savings Union et al*, became and was final, binding and conclusive upon each, every and all parties thereto and upon their successors in interest and was not and could not be affected or modified in any way or manner by any judgment or decree in *Bell v. Staacke* or by either of the judgments purported to have been made and entered therein, *for neither of them was pleaded in bar or abatement.* The voluntary payment by Teresa Bell as such administratrix of the amount due the San Francisco Savings Union in satisfaction of the claim proved against the estate of Thomas Bell many years before any judgment or decree in either of said suits, was made by her *as a joint obligor* on the note of \$60,000 made by Staacke to the San Francisco Savings Union and *the payment of which was guaranteed by said Thomas Bell.* She as such administratrix

of Thomas Bell in making said payment merely performed and complied with the obligation and duty of Thomas Bell as guarantor on said note of \$60,000. The subsequent ratification by John S. Bell of the use by said Staacke and Thomas Bell of said 10,067.2 acre tract jointly with the 4,000 acre tract to raise and borrow for Thomas Bell said \$60,000, though the amount thereof was subsequently credited to the account of John S. Bell, did not and could not affect, alter or change the guarantee of the payment of said \$60,000 by Thomas Bell which was endorsed upon said note, for the ratification was of the transaction and loan as an entirety and there is and was no evidence or finding or decree of any consent on the part of the San Francisco Savings Union or its trustees to any alteration, change or modification of said original transaction or of the obligation assumed by Thomas Bell as guarantor, and it is found and adjudged (Tr. p. 68) that on the 27th day of April 1893 and within the time allowed by law for the purpose said San Francisco Savings Union duly presented to the executors of the estate of Thomas Bell, deceased, its duly verified claim against the estate of said Thomas Bell, deceased, *founded on said promissory note and said guarantee of the payment thereof by said Thomas Bell* and that said executors endorsed thereon their allowance of said claim, and that thereafter on the 17th day of May 1893 said claim was allowed and approved by a judge of the Superior Court of the city and county of San Francisco in manner and form as prescribed by law. This claim became and was from May 17th 1893 a valid and binding judgment upon the estate of Thomas Bell, deceased, and payable out of the moneys of said estate. The defendants in the suit at bar in and by their answers state and allege under oath (Tr. pp. 119-120, 150) “that *prior* to making the payment of said \$179,400.40, to-wit, on the 12th day of June 1908, *the Superior Court of the city and county of San Francisco, state of California, made and entered its ORDER AND JUDGMENT in the matter of the said*

Estate of Thomas Bell, deceased, whereby it ordered and adjudged that Teresa Bell as such administratrix pay from the money and funds of the said estate the sum of \$179,411.40 to said San Francisco Savings Union in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said estate."

But again we press upon the attention of the court the argument that, conceding the validity of the pretended judgment and order of sale in *Bell v. Staacke*, it was absolutely necessary under the California law and practice for Teresa Bell as administratrix to plead the pendency of that action and the judgment therein in abatement of *Bell v. San Francisco Savings Union* until the judgment in the former action became final, and then to plead and prove the same in bar in the latter. The position of Teresa Bell as administratrix etc., in the suit at bar is exactly the same as that of the appellants in the case of *Brown v. Campbell*, 110 Cal. 650. The court says:

"When the present action was commenced, the action of *Priest v. Brown et al* was pending in the same court, and had not been tried. The main issue in that action was whether Priest had the right to subject the lands described in the complaint to the payment of his claim against Joseph Brown. After Priest had been made a defendant in the present action at the instance of the appellants, Campbell and Kent, he filed an answer in which he pleaded the pendency of the former action and the identity of the issues and parties thereto with those in the present action. *There was thus presented to the court for determination the precise question involved in this motion, and, if this issue had been tried and found against the plaintiff, the judgment of the court would have been that the action should abate; and the rights of the parties would have been determined by the judgment in the former action. Instead of taking this course, the*

appellants asked the court, and the court, at their instance, struck this defense from the answer of Priest, and the cause was tried upon the same issues as were presented in the former action, without any objection to a re-examination of them by the court. It is too clear for argument that the appellants cannot after an adverse judgment upon the issues of their own framing interpose a defense to the enforcement of that judgment, which they had an opportunity to present for the purpose of defeating the respondents' claim, but which they industriously sought not to have presented to the court for its judgment thereon.

“When this cause was here upon the former appeal, the appellants urged reversal of the judgment because of the prior judgment in the case of *Priest v. Brown* which they had pleaded as a bar to any further litigation in the issue then determined. . . . In *Harris v. Barnhart*, 97 Cal., 546, it was said: ‘When a judgment is ineffectual as evidence in a plea of former adjudication until the time for an appeal therefrom has expired, the true course of a defendant in such a case would be to plead the pendency of the former action in abatement, until the judgment therein became final, when a supplemental answer averring the proper facts in bar of the action would be in order.’

“The appellants, Campbell and Kent, urge that, as they are mere stakeholders, they are liable to suffer by reason of the different judgments in the two causes. If, however, they had retained their position as stakeholders, and had complied with the offer made in their original answer to the complaint of the plaintiff by paying the money into court, they would then have been entitled to a judgment discharging them from further liability therefor, but, after Priest has been brought into the action at their instance, they abandoned their position as stakeholders, and defended against

his right to receive any of the money. Having thus assumed a position antagonistic to Priest, they cannot claim any of the consideration due a stakeholder, but are in the position of any other litigant who failed to sustain his defense."

The analogy between the case of *Brown v. Campbell* and the suit at bar need not be commented upon at length. It is, however, interesting to observe that the same trustees and their successors are the same stakeholders here as they were in that case, and that Mr. Blakeman, who here appears on behalf of Teresa Bell as administratrix etc., against the application of the principle above stated, was the attorney for the respondent in support of the principle enunciated there.

The U. S. Oil & Land Company, complainant here, was a defendant to the cross-complaints of both Teresa Bell as administratrix etc., and of the San Francisco Savings Union and its trustee in the action of *Bell v. San Francisco Savings Union*, and these parties by the force of the rule laid down in *Brown v. Campbell, supra*, are bound by the judgment in the case of *Bell et al., v. San Francisco Savings Union et al.* in all matters affecting the status of the parties and the title of the 10,067.2 acre tract.

Finally, since the court had jurisdiction of the subject-matter and all the parties in *Bell v. San Francisco Savings Union et al.* and any and all objections of the parties were waived as to jurisdictional questions, the decree in that action is binding and conclusive upon all the parties and as to all the facts, matters and issues contained in the pleadings or included in the findings.

Rodgers v. Pitt et al., 96 Fed. 668, 676-677.

POINT 8.

NEITHER THE JUDGMENT IN *Bell v. San Francisco Savings Union*, ACTION No. 4424, NOR THE TRUSTS CREATED BY THE DEED FROM STAACKE TO CAMPBELL AND KENT, HAS BEEN EXECUTED.

The defendant Teresa Bell as administratrix etc., by paying the said claim proved and allowed against the estate of Thomas Bell deceased, the same being the debt secured to the San Francisco Savings Union by the deed of trust, in her representative capacity, instead of allowing the sale of 10,067.2 acre tract to be made under the provisions of the deed of trust and the judgment in *Bell v. San Francisco Savings Union* directing the proper execution thereof, by sale, *discharged the same*, and the conveyance of the 10,067.2 acre tract to her in her representative capacity by the trustees of the San Francisco Savings Union, instead of to "Staacke, his heirs or assigns" in their representative capacity of trustees of the trust created by the deeds of Grover and Rosener, *made her an involuntary trustee of the 10,067.2 acre tract for the grantees of John S. Bell*. By the discharge of the debt to the San Francisco Savings Union by one of the parties primarily liable therefor, the title to the 10,067.2 acre tract upon conveyance by the trustee was necessarily held upon the same trusts that existed in Staacke before the note and deed of trust in favor of the San Francisco Savings Union and its trustees were executed and delivered by Staacke and Thomas Bell. (*Savings and Loan Society v. Burnett*, 106 Cal. 514, 528).

"Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration."

Civil Code of California, section 2243;

Cavagnaro v. Don, 63 Cal. 227, 231;

Moultrie v. Wright, 154 Cal. 520-526;

Thompson v. Bank of California, 4 Cal. App. 660;

Chamberlin v. Chamberlin, 7 Cal. App. 634.

...Justice Ross, in rendering the decision in *Cavagnaro v. Don*, supra, quoted with approval from Perry on Trusts, section 217: "It is an *universal* rule that if a man purchases property of a trustee with notice of the trust, he shall be charged with the same trust in respect to the property as the trustee from whom he purchased. And even if he pays a valuable consideration, with notice of the equitable rights of a third person, he shall hold the property *subject to the equitable interests of such person.*"

In California a deed of trust has no feature in common with a mortgage except that it is executed to secure an indebtedness, and a suit for a foreclosure and sale will not lie, as the contract of the parties is that, upon default, the trustee shall sell according to the directions of the trust.

Kock v. Briggs, 14 Cal. 257-263;

Fuquay v. Stickney, 41 Cal. 583-587;

Whitman v. San Francisco Savings Union, 50 Cal. 145-150;

Grant v. Burr, 54 Cal. 298-301;

Bateman v. Burr, 57 Cal. 480-483;

Savings & Loan Society v. Deering, 66 Cal. 281-286;

Partridge v. Shepard, 71 Cal. 470-478;

Moore v. Calkins, 95 Cal. 435-437;

Savings & Loan Society v. Burnett, 106 Cal. 514-528;

Herbert Kraft Co. v. Bryan, 140 Cal. 73-80;

Weber v. McCleverty, 149 Cal. 322;

Travelli v. Bowman, 150 Cal. 587;

So strongly engrafted upon the law of California is the idea that a debt secured by any deed of trust must be made good or enforced by the act of the parties themselves in executing the provisions of the deed, that in *Herbert Kraft Co. v. Bryan*, supra, the court entertained a grave doubt whether, in analogy to the construction which it has placed on section 726 of the Code of Civil Procedure providing that there can be but

one action for a debt secured by mortgage, an action will lie on a debt secured by deed of trust before sale, saying:

“Assuming that a deed of trust is not within that section, still there are other considerations to be weighed in determining whether a creditor who has accepted such a deed as security has not contracted to pursue the terms of the deed when he attempts to forcibly collect the debt.”

In *Weber v. McCleverty*, *supra*, the court held that no presentation of the debt secured by a deed of trust as a claim against the estate of a deceased trustor is necessary as a prerequisite to the execution of the power of sale conferred by the deed, and that a sale under the deed cuts off a homestead right created subsequent to the deed in point of time. In reaching these results the court had occasion to criticize the language used in *Sacramento Bank v. Alcom*, 121 Cal. 379; *Tyler v. Currier*, 147 Cal. 36; and *Hodgkins v. Wright*, 127 Cal. 688, wherein such expressions concerning deeds of trust as that “In effect, they are mortgages with power of sale,” and the court said:

“The statement that they are *in effect*, or practically, mortgages with power to sell, means only that the practical result of the enforcement of either is the same: that is, the estate held by the mortgagor at the time of the execution of the mortgage in one case, and that of the trustor at the time of the execution of the deed of trust, in the other case, are by the respective conveyances of the sheriff on foreclosure sale, and of the trustee on the trustee’s sale, transferred to the respective purchasers at such sales and that in the meantime the mortgagor and the trustor have the use and enjoyment of the property.”

The decision of the court upon this point was given in the following words:

“In legal effect, a deed of trust does *not* create a lien or incumbrance on the land, *but conveys the*

legal title to the trustee. In order to execute the trust he must be by the deed so far invested with the absolute title of the land as is necessary to enable him to convey it to the purchaser at the trustee's sale free of all right, title, interest or estate of the trustor, or of any one claiming under or through the trustor by virtue of any transaction occurring after the making of the trust deed. The deed of trust, therefore, vests in the trustee, for the purposes of the trust, *the absolute legal title to the entire estate held by the trustor immediately prior to its execution*, and that estate must remain in the trustee for that purpose until the trust is either executed or ceases to exist by reason of payment of the debt." (Italics are ours.)

But were this not the law of California, and instead thereof it was provided that a deed of trust was required to be foreclosed in an action similar in form and resulting in the same kind of a judgment with directions for a sale as that entered in *Bell v. San Francisco Savings Union*, still the transaction and deed by which the defendant Teresa Bell as administratrix etc., claims title to the 10,067.2 acre tract was and is absolutely *void as against and in contravention of the express terms of the decree*; for not only was the payment made as a payment of the claim presented and allowed against the estate of Thomas Bell on said Thomas Bell's guarantee of the \$60,000 note and of the payment thereof but the conveyance by the trustees of the Savings Union to said Teresa Bell as such administratrix in consideration thereof, was *not* in compliance with the sale ordered by the judgment in that case; and, if it had been such a sale *it has never been confirmed as required by said judgment*. It was also contrary to and in violation of the provisions of said decree requiring the sale to be made at public auction after publication of notice thereof in certain newspapers designated therein, and deprived the complainant of material rights secured to it by such provisions of the decree, and of the

opportunity to protect its rights, title and interest by bidding at such public auction and buying the property.

It is FATAL ERROR in a decree ordering a sale of real estate without directing that the sale shall first be notified to and confirmed by the court as provided in the statute under which the sale was made.

Bank of United States v. Ritchie, 8 Pet. 128

A sale made and conveyance by a trustee when he has exceeded his power *in conveying the land in violation of the decree*, is void.

Bank of United States v. Ritchie, 8 Pet. 128;

Where sale of trust property is subject to confirmation or rejection by the court, title will not pass unless sale is confirmed by the court.

Kenaday v. Edwards, 134 U. S. 117, 125.

At the hearing below of the special defense, counsel for the defendants Hammon and Van Deinse, in attempting to support the validity of the pretended judgment and order of sale in *Bell v. Staacke*, and the pretended sale to the defendant Teresa Bell as administratrix etc., through whom they claim title to 2100 acres of the 10,067.2 acre tract, urged upon the consideration of the court a line of authorities in California which seem to support the doctrine that a trustor's interest in real property conveyed by deed of trust to secure an indebtedness *may be sold and conveyed* by voluntary conveyance, or that it may be encumbered, and that because this is so they contended the court had jurisdiction in *Bell v. Staacke*, of the equitable title of John S. Bell and his grantees in the 10,067.2 acre tract and that it was this interest that passed to Teresa Bell administratrix under the commissioner's deed following that pretended sale. In this, however, they lose sight of the fact that those cases merely hold that such an estate in the trustor *is alienable*, and if alienated or encumbered as such the *contract* of the parties is valid and enforceable. Counsel also lose sight of the fact that neither John S. Bell nor his grantees ever

entered into any contract with Staacke, through whom the defendant Teresa Bell claims, with reference to their equitable estate in the 10,067.2 acre tract; but that, on the other hand, the pretended claim of a lien upon said 10,067.2 acre tract conveyed by Grover and Rosener in trust to Staacke was against both the legal and equitable titles and it was both of these titles—the land itself which were ordered sold by said purported judgment and both of which John S. Bell and his grantees had a right to expect to have sold to realize the full value of the security. *This is what made the San Francisco Savings Union and its trustees indispensable parties to the action of Bell v. Staacke*, but they were not made parties to said action, and the land could not therefore be so sold in said action.

Finally, we respectfully submit, in any view of the facts of this case, Teresa Bell as administratrix etc. is an involuntary trustee for the appellant herein of an undivided half interest in and to the 10,067.2 acre tract under the terms and provisions of the trust created in Staacke by the deed of March 7 1887 from Grover and Rosener; that this trust is revived in her with equal effect whether the said purported decree and order of sale in *Bell v. Staacke*, is valid and she obtained all the interest, both legal and equitable, which Staacke as trustor had in the 10,067.2 acre tract when he conveyed to Campbell and Kent, or whether that sale be considered void (as we claim and assert) and it is held that she paid the claim due the San Francisco Savings Union in her representative capacity as administratrix with the will annexed of the estate of Thomas Bell, deceased, as the voluntary act of one jointly liable to pay a secured debt or paid it under an order of the court in the matter of said estate. In either case she occupies toward the land in question the position of one who with notice of the trust and as the successor in interest of the trust property has again received the title thereto after it has once passed into the hands of a bona fide purchaser. Section 2243 of the Civil Code of California and the cases cited inter-

preting its application are but declaratory of a rule in equity as old as the law of trusts, viz: that after the title to trust property has passed to purchasers for value and without notice of the trust and has been discharged from the conditions thereof, upon a reconveyance of the property to the original trustee or to parties having notice of the original trust the rights and titles of all parties thereto are revived and may be enforced under the trust originally created. If a person holding land in trust conveys it by an absolute deed to another, who takes it without notice of the trust, and it afterwards passes through several owners to the first holder, he will hold it in trust as before.

Church v. Church, 25 Pa. (1 Casey), 278;

Church v. Roland, 64 Pa. (14 P. F. Smith), 432.

On the 14th day of February, 1908, the judgment in said suit of *Bell et al., v. San Francisco Savings Union et al.*, was affirmed upon separate appeals taken therefrom by Teresa Bell as such administratrix and by the U. S. Oil & Land Company and James L. Crittenden (Tr. p. 81) (Admitted by Hammon and Van Deinse, Tr. p. 272; not denied by other defendants.)

The 10,067.2 acre tract has greatly increased in value by reason of the discovery of oil therein and in the adjoining land and is now of the value of at least \$2,999,999.00 (Tr. pp. 81-82). (Admitted by all defendants; Hammon and Van Deinse merely deny that it is worth \$3,000,000.00 Tr. p. 273.)

On June 15th, 1908, said Teresa Bell as such administratrix paid to the San Francisco Savings Union \$179,411.40, the full amount due it on its claim proved and allowed against the estate of Thomas Bell, deceased in charge, settlement and satisfaction thereof, and on the same day the said Mercantile Trust Company of San Francisco and said San Francisco Savings Union made and executed an instrument in writing purporting and pretending to grant, bargain, sell and convey said 10.067.2 acres of land to said Teresa Bell as administratrix of the estate of Thomas Bell, deceased, which said

instrument was dated *May 26th, 1908*, and recorded at the request of said Teresa Bell as such administratrix on the *15th, day of June, 1908*, in Book of Deeds No. 118 of the Records of Santa Barbara County; and on *June 16th, 1908*, said Teresa Bell as such administratrix and said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco made and filed by their attorneys in said action of *Kate M. Bell et al., v. San Francisco Savings Union et al.*, No. 4424, in the Superior Court of Santa Barbara County a written instrument or stipulation stating and declaring "That the total amount due to said San Francisco Savings Union was \$179,411.40 and that said amount had been paid to said San Francisco Savings Union by Teresa Bell as such administratrix *without any sale of the lands in said judgment described*, and that it was, therefore, stipulated that the said judgment in said action No. 4424 *be and was satisfied, and that the Clerk of the said Superior Court was directed to enter satisfaction of said judgment.*" The said pretended sale and transfer of June 15th, 1908, was made secretly without any notice whatever thereof or of any proposed sale being given or published in any news paper, and without any notice whatever being given to said U. S. Oil & Land Company. The said Teresa Bell, Mercantile Trust Company and San Francisco Savings Union knew at the time of said pretended sale and transfer on June 15th, 1908, that said 10,067.2 acres of land was worth and of the value of at least \$500.00 and that the development of oil near or adjoining said land made it prospectively worth \$1,000,000.00 or more, and said pretended sale and transfer was a fraud upon the appellant and contrary to and in violation of the decree in said action No. 4424, and said Teresa Bell as such administratrix claims and asserts that said pretended deed and conveyance date May 26th, 1908, transferred and vested in her as such administratrix the title of, in and to said tract of land consisting of 10,067.2 acres and all rights, title and interest of said

U. S. Oil & Land Company, the appellant herein, and and that said claim is without merit and wrongful and unlawful and contrary to and in conflict with said judgment in said action No. 4424 and was a fraud upon the appellant and was and is made with the wrongful, fraudulent and unlawful intents, purposes and designs alleged and with intent to defraud said U. S. Oil & Land Company out of its interest in and title to said land. The said 10,067.2 acres of land has never been advertised for sale by said Mercantile Trust Company of San Francisco as required in and by said decree, and said pretended deed and conveyance dated May 26th, 1908, and said pretended transfer of said tract of 10,067.2 acres to said Teresa Bell as such administratrix by said Mercantile Trust Company and San Francisco Savings Union *have never been reported or submitted to or approved or confirmed by said Superior Court of Santa Barbara County* (Tr. pp. 82-87). The facts in this paragraph stated are substantially admitted by all of the defendants (Tr. pp. 119-124, 273-277, 150-155, 168-170), the only denials being as to the alleged fraud, fraudulent intents and wrongful and unlawful nature or character of said transactions. Hammon and Van Deinse directly admit the transactions as alleged, denying only fraud, fraudulent intents and that said acts were wrongful or unlawful and that the transfer and conveyance was a pretended one; the other defendants, except the Associated Oil Company allege under oath that said \$179,411.40 "was paid by said Teresa Bell as such administratrix from the moneys and funds of said estate in accordance with the said judgment and order of said Superior Court in and for the City and County of San Francisco," also that it was paid "in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said estate," and also that "the said San Francisco Savings Union, upon its receipt of the said sum of \$179,411.40, made, executed and delivered to said Teresa Bell as such administratrix a deed of *RE-CONVEYANCE OF ALL THE LAND EMBRACED IN ITS SAID MORTGAGE*

TO-WIT, THE 4000 ACRE TRACT AND THE SAID TRACT OF 10,067.2 ACRES" (Tr. pp. 119-120, 150-152). Said defendants also state and allege the payment of said \$179,411.40 was made under an order and judgment of said Superior Court of the City and County of San Francisco in the matter of the said estate of Thomas Bell (Tr. 119-120, 150).

The denial by Teresa Bell and by all of the other defendants except Hammon, Van Deinse, the Associated Oil Company, Kate M. Bell and John S. Bell (Tr. 123, 154) "that the said Teresa Bell, the Mercantile Trust Company and the San Francisco Savings Union knew, or that each or any of them knew, at the time of the said transfer and of the payment of the said sum of \$179,411.40 that the said tract of land of 10,067.2 acres was worth and of the value of at least \$500,000, *or of any greater value than \$100,000*, or that they knew that the development of oil near or adjoining said lands made them prospectively worth \$1,000,000 or more" shows and proves conclusively that the reconveyance of the 4,000 acre tract was the real and material consideration for the payment of said \$179,411.40, and this would have appeared beyond any doubt on a trial upon the merits, for it would have been proven by incontrovertible evidence and testimony that said administratrix had already sold or made a contract to sell said 4,000 acres for about \$450,000, and that after or before said reconveyance said 4,000 acres of land was sold for that amount and the money paid, and that a part of the very money received for said 4,000 acres was used in making said payment of \$179,411.40 to the San Francisco Savings Union. This was an ingenious arrangement or device by means of which Teresa Bell as such administratrix sought to obtain the 10,067.2 acre tract without paying any consideration therefor, though the same would have sold for at least \$1,000,000.00 and probably for much more at the rate said administratrix sold the 4,000 acre tract. It would have also been shown on a trial of the merits of this suit that said Hammon and Van Deinse contracted

to pay at the rate of more than \$500 an acre for the 2,100 acres claimed to have been purchased by them from the said administratrix and heirs of Thomas Bell. Had the 10,067.2 acre tract been sold at the rate received by said administratrix for the 4,000 acres, the indebtedness to the San Francisco Savings Union would have been paid and at least \$800,000 paid over by the Mercantile Trust Company under the decree in said suit of *Bell v. San Francisco Savings Union* to George Staacke, his heirs assigns and would have passed to the appellant as the successor of John S. Bell, the original beneficiary of the trust upon which said 10,067.2 acres were conveyed to Staacke by Grover and Rosener. If the 10,067.2 tract had been sold at the rate paid per acre by Hammon and Van Deinse, SOME MILLIONS OF DOLLARS would have gone to the appellant when paid over to Staacke or his heirs under said decree. It must be apparent, therefore, that the said transaction and deed by which said Mercantile Trust Company and the San Francisco Savings Union attempted to transfer to said Teresa Bell as such administratrix the said 10,067.2 acres of land was in the highest degree injurious and damaging to the U. S. Oil & Land Company, appellant herein, and in every sense wrongful and unlawful because it deprived the U. S. Oil & Land Company of rights secured to it by said decree; and it in no respect or way complied with or conformed to the decree. The decree being valid and binding upon all parties to the suit it could not be disregarded or departed from without the consent of all parties, and the court itself could not change it after its affirmance on appeal without such consent. The conclusions of law upon which said decree was made (Tr. p. 73) declare positively and unequivocally that "said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed is entitled to no other judgment herein" than "that so much of said piece or parcel of land described in said grant in trust as does not include said second above described of said two several pieces of land be

first sold by said defendants Mercantile Trust Company of San Francisco in the execution of said trusts to the end that to the extent of the proceeds thereof the amount of said promissory note and interest (the \$60,000 note to the San Francisco Savings Union) may be paid out of said proceeds," that is, that the 10,067.2 acres be sold first. The Court had found in Finding 39 (Tr. p. 71) that there was no such understanding or agreement that said 10,067.2 acre should be sold first. The said judgment (Tr. p. 74) states that it is "Adjudged that the above-named plaintiffs Kate M. Bell and James L. Crittenden and the above-named defendant to cross-complaint U. S. Oil & Land Company jointly and severally take nothing by this action *and that the above-named defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed take nothing by this action except as hereinafter adjudged*, and nowhere adjudges anything in favor of said Teresa Bell as such administratrix unless the direction to sell the 10,067.2 acres first be construed to have been in her favor and for her benefit. The decree that the Mercantile Trust Company pay "*the balance of said proceeds, if any, (from the sale of both tracts) to said defendant George Staacke, his heirs or assigns*" (Tr. p. 80) was not an adjudication in her favor. The decree obviously left the execution of the original trust to Staacke after the receipt of such proceeds by him from the sale of said pieces of property, for it found (Tr. pp. 54-56) the trust upon which said tracts were conveyed by Grover and Rosener to Staacke.

The adjudication that Kate M. Bell, James L. Crittenden and U. S. Oil & Land Company" take nothing by this action" merely meant that the Court would not grant them any of the relief against the San Francisco Savings Union and the Mercantile Trust Company prayed for by them. It is the form usually employed where parties are denied the relief sought by their pleadings.

On the 5th day of April 1905, George Staacke died testate and thereafter George Henry Howard was duly appointed and qualified as executor of his estate on the 19th day of April 1907 (Tr. pp. 36-37). Thereafter said George Henry Howard executed to the defendant O. H. Harshburger a deed and conveyance purporting to transfer and convey all the right, title and interest of said George Henry Howard in and to said tract of 10,067.2 acres with notice and knowledge of facts alleged in the bill showing the rights, title and interest of appellant herein (Tr. pp. 89-90) (Not denied by any of the defendants). The bill avers that said deed made by said Howard to said Harshburger was made with certain unlawful and fraudulent intents (Tr. p. 90) which averment as to unlawful and fraudulent intents is denied by the answer.

The bill further alleges that the matter in controversy, exceeds exclusive of costs, \$10,000; that the property involved exceeds in value \$1,000,000; that the matter in controversy in this suit is between the complainant, a citizen of Arizona, and the defendants, citizens of California; that each and all of the defendants had notice of said judgments, decrees and findings and of the right, title and interest of complainant in and to an undivided one-half of said tract of 10,067.2 acres before they or any of them entered upon the same or paid any money or consideration for any right or interest therein or thereto; that said Hammon and Van Deinse in June, 1911, wrongfully and unlawfully entered upon a portion of said land with certain wrongful and unlawful intents stated and threatened to extract and appropriate large quantities of oil therefrom; that said Teresa Bell as such administratrix has collected large sums of money as rents from said land, etc.; that on or about May 20th, 1908, said Teresa Bell, Mercantile Trust Company of San Francisco and San Francisco Savings Union combined and conspired together to evade and defeat said decree in said action No. 4,424 and to deprive complainant of its right, title and interest in and to an undivided one-half of said

10,067.2 acres and of its interest in and right to the proceeds that might be obtained by and from a sale thereof under said decree, and did, in pursuance and execution of said conspiracy, cause said deed of May 26th, 1908, to be made, executed and recorded as alleged in the bill; that defendant C. A. Hunt is the County Clerk of said County of Santa Barbara and the Clerk of said Superior Court of said Santa Barbara County and has in his possession and under his control the deed and conveyance made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden and delivered to said Hunt on the 8th day of July, 1901, as alleged in the bill (Tr. pp. 90-92). The matters stated in this paragraph are either admitted or not denied, except in so far as they charge fraud, combination, or conspiracy or that the acts were wrongful or unlawful or done with fraudulent intent, object, purpose or design.

The facts hereinabove in this brief stated appear and are clearly and fully averred and alleged in the bill and the District Judge, as we have stated above, did not seem to know or to understand what was alleged in the bill or the force or effect of the facts stated in it. His decision being upon the whole bill and not upon the special matter or issue heard under his order, we have been compelled to set forth fully and at such great length the facts and matters alleged in the bill so that the real merits of the bill might fully appear to this Court on the appeal.

Appellant respectfully submits that the decree should be reversed and the cause remitted to the court below for trial upon the merits, and that appellant is entitled to recover its costs on this appeal.

RICHARDS & CARRIER,
and

JAMES L. CRITTENDEN,
Solicitors for Appellant.

JACOB M. BLAKE
Of Counsel.

Dated: September 26th, 1914.

3

No. 2415

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

U. S. OIL & LAND COMPANY, a corporation,

Appellant,

vs.

TERESA BELL, as Administratrix of the Estate of
Thomas Bell, deceased, with the will annexed, et al.,

Appellees.

Brief for Appellees W. P. Hammon and
F. C. Van Deinse.

CHARLES W. SLACK, and
CHAUNCEY S. GOODRICH,

Solicitors for said Appellees.

Filed this.....day of October, A. D. 1914.

F. D. MONCKTON, Clerk.

By....., Deputy Clerk.

Filed
THE JAMES H. BARRY CO.

OCT 3 - 1914

F. D. Monckton,

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	} <i>Appellees.</i>

**BRIEF FOR APPELLEES W. P. HAMMON AND
F. C. VAN DEINSE.**

The appeal is from a decree dismissing the bill (Tr., p. 296). The decree itself was one made after a hearing, had under New Equity Rule 29, upon a defense theretofore "presentable by plea in bar," namely, the defense of several existing judgments of

the courts of the State of California (Tr., p. 291). This defense the District Court held to be a complete bar to the bill (Tr., pp. 295-6), and so decreed (Tr., p. 297).

The appellant urges the following points:

1. That the decree as made and recorded incorrectly sets forth the stipulation of the parties on which the hearing was had (Tr., p. 341; Brief, pp. 3, 28).

2. That the State courts had no jurisdiction to render the judgments relied on by the appellees, and that these judgments were therefore void and wholly ineffective as a bar to the bill.

3. That even admitting the efficacy of those judgments, the bill was not barred thereby and therefore ought to have been heard on the merits.

We shall take up and discuss these points in order, and further will urge on our own account

4. That the decree properly dismissed the bill, because the latter failed to set forth facts justifying its retention in Equity.

THE RECITAL IN THE DECREE OF THE STIPULATION ON
WHICH THE HEARING WAS HAD.

The decree recites (Tr., p. 296) that at the hearing it was

“admitted and stipulated by the complainant *that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each the said several answers* and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P. Hammon and F. C. van Deinse.” (Italics ours.)

Succeeding a lapse of four months, both after the entry of the decree (Tr., p. 298) and after such entry had been called to the attention of the appellant (Tr., p. 317), the latter formally moved for a modification of the decree to read in this respect that at the hearing it was (Tr., p. 299)

“admitted and stipulated by the complainant and defendants above named, that *the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered* in the Supreme Court of the State of California, the Superior Court of the State of Califor-

nia in and for the County of Santa Barbara, and the Superior Court of the State of California in and for the City and County of San Francisco, *are substantially correct copies thereof.*" (Italics ours.)

Whatever might have been the importance or the effect of the modification sought, the motion for its allowance was certainly groundless. The facts relating to the hearing, and the stipulations of counsel preceding it, are set forth in full in the affidavits of counsel for the appellees (Tr., pp. 304-320) used at the hearing of the motion for a modification. The Court, in its opinion antedating the decree, in speaking of the judgments recites that (Tr., p. 291)

"it has been agreed between the parties that such defenses may be separately heard and disposed of before the trial of the principal case, under Equity Rule 29."

This opinion also speaks (Tr., p. 296) of

"the admitted judgments set forth in the answers."

The entire earlier record of the case shows that the defense actually considered was one of existing and admitted judgments, orders and decrees, and not one impotently based upon

"copies of judgments, orders and decrees alleged or claimed to have been rendered and entered."

At the outset of the present litigation, in ruling

upon the demurrers of the appellees, the same Court said (Tr., p. 175):

“If I felt at liberty to take judicial notice of the numerous orders and decisions that may have been entered in the courts of California in the course of the protracted litigation referred to in the bill, I would perhaps feel constrained to hold that there is no equity in the bill and that the demurrer should be sustained. But I am satisfied I am not authorized to take judicial notice of judgments entered in the courts of this State. Doubtless this Court will take judicial notice of the general rules of law declared by the Supreme Court of California in written opinions, but it will not take such notice of the judgment in any particular case unless properly pleaded and proved.”

The same judgments, orders and decrees were pleaded in bar by these appellees, under the former rules (Tr., pp. 181-213). A replication to the answer supporting the plea was filed by the appellant (Tr., p. 223). The minute orders of the Court tell the story of what followed. The motion on the plea was argued (Tr., p. 226) and was denied, the Court preferring to hear the special defense upon answer since, by that time, the new rules abolishing pleas had gone into effect. The order of denial, however, provided that after the filing of the answer the cause should on a date certain (Tr., pp. 226-227).

“be heard separately on the question of certain judgments in the State courts.”

On the day set the cause came on (Tr., p. 289)

“to be heard separately on the special defense, viz., previous judgments, etc., as set up by the bill and answer,”

and was then continued only because none of appellant's counsel appeared at the hearing. At the continued hearing “said special defense” was argued by counsel for both sides and submitted on briefs (Tr., pp. 290-291).

The two briefs of appellant's counsel, filed upon this submission, clearly show that the actual existence of the judgments in question, and their terms as pleaded, were admitted by the appellant and only their validity and effect questioned by it. These briefs are properly before this Court, and subject to its examination, if the correctness of the recital made in the decree of counsel's stipulation is to be questioned here.

National Foundry, etc., v. Oconto, etc., Co.,
183 U. S., 216, 234;

McIntosh v. Pittsburg, 112 Fed., 705, 706-707;
U. S. v. Norfolk, etc., Co., 114 id., 682, 685-686;

Russell v. Russell, 129 id., 434, 438-439.

When the motion to modify the decree came to be heard it was denied (Tr., p. 324), save that, in order to meet the far-fetched suggestion of appellant's coun-

sel that the stipulation as recited bound them to an admission of the validity of the pleaded judgments, there was inserted in the decree (Tr., p. 323) the words

“But the complaint did not stipulate or admit that such judgments or decrees were valid or binding, or that the said several courts had jurisdiction to render or enter the same.”

The trial Court's recital as to what were the terms of a stipulation formally entered into in its presence can hardly be questioned here, especially since it repeated that recital by its denial of the motion to modify the decree. But in any event its statement is supported by the entire record. Had not the stipulation, as recited, been entered into, there would have been but slight cause to hold the repeated hearings which were had upon the special defense of *res adjudicata*. It is hardly to be presumed that Court and counsel would have repeatedly convened and considered questions whose determination, under the circumstances claimed by counsel for appellant to have existed, would have been a vain act.

In view of the character of the question raised in this present instance by the appellant, and of its patent inconsequence in the face of the record and of the District Court's earlier answer to it, we shall not give it undue importance by a continued discussion. If we have already treated it with a consideration it did not merit, it is because the question is raised by ap-

pellant's specifications of error (Tr., pp. 340-1), and is particularly stressed in its brief (Brief, pp. 3, 28).

II.

THE JUDGMENTS BY THE STATE COURTS IN BELL V. STAACKE WHICH THE APPELLANT URGES ARE VOID FOR LACK OF JURISDICTION.

The statement of facts in the brief for appellant follows in the main the allegations of the bill. It therefore does not include a definite, or in fact any, statement of the special defenses relied on by these appellees and found to be sufficient by the District Court. Only inferentially is information to be obtained from it regarding the judgments which make the subject matter of the bill *res adjudicata*. Consequently we are reluctantly compelled ourselves to make a succinct presentation of the facts.

The Preliminary Facts.

The controversy was between the respective successors in interest of John S. Bell, on the one hand, and of Thomas Bell, on the other, and is concerned with the title to a tract of 10,000 acres of land in Santa Barbara County, California. The appellant claims through the nephew, John S. Bell, the appellees through the uncle, Thomas Bell.

The relevant facts are simple. They appear from the pleadings, and the decrees there set out. In 1874 the uncle made a gift and conveyance to the nephew

of two certain tracts of land in Santa Barbara County, California, one of 10,000 acres, the other of 4,000 acres, in extent (Tr., p. 44). The uncle thereafter advanced large sums to the nephew and in 1885 took from him a reconveyance of the 4,000-acre tract in satisfaction of a portion, some \$45,000, of the indebtedness so created (Tr., p. 45).

In 1887 uncle and nephew joined in a sale of the 4,000-acre tract and 10,000-acre tract (Tr., pp. 46, 232), the sellers mutually agreeing that the purchase money mortgages to the 10,000-acre tract should be held by the uncle to secure his debt from the nephew (Tr., pp. 49, 233). The purchaser (Grover-Rosener) defaulting in the payment of the purchase price (Tr., pp. 53, 234), the sellers in 1889 secured a retransfer of the property, title to both tracts being taken by George Staacke, a confidential employee of Thomas Bell (Tr., pp. 54, 234). The indebtedness of the nephew to the uncle had meanwhile increased and continued to increase until the latter's death late in 1892 (Tr., pp. 51, 237). Early in 1892 George Staacke executed a deed of trust of both tracts, aggregating 14,000 acres, to Campbell & Kent as trustees, to secure the repayment to San Francisco Savings Union of \$60,000 in accordance with the terms of a certain promissory note executed by Staacke to the last named corporation (Tr., pp. 58, 239).

In 1893 John S. Bell commenced suit, in the Superior Court of Santa Barbara, against George

Staacke and the estate of Thomas Bell, praying for a decree that George Staacke held the title to the 10,000-acre tract upon a naked trust to reconvey to him, John S. Bell. This action is generally referred to as *Bell v. Staacke*. A decree was rendered in 1901, in conformity with the plaintiff's prayer, giving the estate of Thomas Bell judgment for over \$50,000, but adjudging that this indebtedness was *not* secured by the 10,000-acre tract, which was thereupon ordered reconveyed free and clear to John S. Bell's grantees. This is the *decree of June 29, 1901*, set forth in the bill (Tr., pp. 12-34).

In 1898 John S. Bell's grantees commenced suit, in the same Superior Court, against Campbell & Kent, San Francisco Savings Union and the estate of Thomas Bell, praying for a decree that the deed of trust executed by George Staacke in 1892 was a violation of the trust upon which he held the 10,000-acre tract, was made without the knowledge of John S. Bell and was ineffective as a lien upon the said tract, and, further, that John S. Bell never received any benefit from the \$60,000 loan which it was given to secure. The present appellant, U. S. Oil & Land Company, as successor in interest of John S. Bell, was a party to the action (Tr., p. 40). A decree was rendered in 1905 completely denying each and all of the plaintiffs' contentions, adjudging that the deed of trust was made with the knowledge and consent of John S. Bell and was effective as a lien on the 10,000-

acre tract, and, further, that the whole amount of \$60,000 which it secured was obtained for the benefit of John S. Bell and had been applied in reduction of his indebtedness to his uncle. Further, it decreed that the estate of Thomas Bell was entitled to have the 10,000-acre tract sold before the 4,000-acre tract, upon the sale decreed to satisfy the claim of San Francisco Savings Union, then amounting to over \$158,000. This action is known as *Bell v. San Francisco Savings Union*, or as the *San Francisco Savings Union case*. The decree therein is set out in the bill (Tr., pp. 39-81).

Appellant's Contentions.

The appellant sets up in its bill, first, the judgment of June 29, 1901, in *Bell v. Staacke*, alleging its conclusiveness and finality (Tr., pp. 17-21), second, the judgment in the *San Francisco Savings Union case* and its finality (Tr., p. 81), and the further facts that such judgment decreed a sale of the 10,000-acre tract and that such sale has never been carried out but, on the contrary, has been prevented by a conspiracy between the appellees (Tr., pp. 81-92). We shall, as before indicated, take up these contentions of appellant in order.

The Finality of the Decree of June 29, 1901, in Bell v. Staacke.

The answer of the appellees sets up, as a reply to

the decree in *Bell v. Staacke* pleaded in the bill, the fact that such decree was vacated by the Supreme Court of California, that a new trial was had and another decree made, that such decree was affirmed on appeal and thereafter executed, and that under acts performed under such decree the appellees are the owners of the 10,000-acre tract (Tr., pp. 228-255).

The appellant admits the existence of the subsequent decrees, judgments and orders in *Bell v. Staacke* pleaded by us. How then can it say that the decree of June 29, 1901, is final? Only by arguing, as it does, that the Supreme Court of California had no jurisdiction to vacate, and never effectually vacated, that decree, and that the Superior Court of Santa Barbara had therefore no jurisdiction to retry the case. Let us see how much validity there is in this argument, how ready a reception it should receive at this time and in this court.

The bill admits that the defendants in *Bell v. Staacke* appealed from the decree relied upon by appellant. But of such appeal it says (Tr., p. 18):

"Thereafter such proceedings were duly had and taken on said appeal from said decree to the Supreme Court, so taken as aforesaid, that *said appeal from said judgment and decree was dismissed for want of jurisdiction by the said Supreme Court of the State of California, and the said judgment and decree thereby became and was affirmed*; that *said judgment and decree ever since has been and remained and still is in full force*; and that *said judgment and decree was and is a final adjudica-*

tion of the rights and interests of the parties to said action in which it was rendered and entered."
(Italics ours.)

It then recites (Tr., p. 18) the filing of findings of fact and conclusions of law on March 6, 1901, and of additional findings and conclusions on June 7, 1901, and alleges that no notice of intention to move for a new trial was given

"on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901,"

and then proceeds (Tr., p. 18):

"That the findings of fact and conclusions of law and *the decision* of said Superior Court in said action of *John S. Bell v. George Staacke, et al., on the 9th day of July, 1901, became and ever since have been final, conclusive and binding upon all the parties to said action, and their successors in interest, and upon each and all of the heirs of said Thomas Bell, deceased, and the jurisdiction and power of said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever and ceased to exist, and the said Superior Court and any and all Appellate Courts of the State of California, and the Supreme Court of the State of California lost and ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or*

manner or respect *said judgment of said Superior Court.*" (Italics ours.)

Then follows (Tr., pp. 19-21) a voluminous statement of the laws of California relating to new trials, and motions therefor, and to the effect to be given a dismissal by the State Supreme Court of an appeal. The dismissal by the Supreme Court of California of the appeal of the defendants from the decree of June 29, 1901, is recited at some length (Tr., p. 21), and the bill then continues (Tr., p. 21):

"That said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside; that the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision of said Superior Court in said action." (Italics ours.)

The bill is ingeniously drawn. It skims lightly over the thin ice of truth, leaving behind, however, a track spelling the tell-tale words "*suppressio veri.*" The first reading of its fluent phrases would leave any stranger to the controversy satisfied that the appellant not only had rights fully established by a decree of the trial Court in *Bell v. Staacke*, but that such decree had been established as a finality by a judgment of the Supreme Court of California. A second perusal *might* inspire the reader with a little suspicion of the good faith of the pleader, who be-

trayed so nervous an anxiety, to anticipate the possible defense of "new trial," as laboriously to discuss the law controlling new trials and to deny the jurisdiction of the Supreme Court to award one in *Bell v. Staacke*. The stranger, upon a third reading, would inevitably discover the nigger in the woodpile, in the presence of the plausible assertion that no notice of intention to move for a new trial was made

"on or after the 7th day of June, 1901,"

and in the absence of any allegation whatsoever that no notice of such intention was given *prior* to June 7, 1901, and *after March 6, 1901*, when the decision of the Court was filed.

What is the whole truth of the matter? The appellees' pleading answers the question by pointing to *six decrees in Bell v. Staacke subsequent to the decree of June 29, 1901* (Tr., pp. 228-255).

First.

Bell v. Staacke, 137 Cal., 307; 70 Pac., 171,
September 16, 1902.

In the very same proceeding in which John S. Bell obtained a dismissal of the defendants' appeal from the decree of June 29, 1901, on the ground that it was prematurely taken, he sought to obtain a dismissal of the appeal from an order made by the trial Court denying the defendants' motion for a new trial, on the ground that the notice of intention to make such

motion had also been prematurely given. The judgment of the Supreme Court is as follows (137 Cal., 309; 70 Pac., 172):

"The motion to dismiss the appeal taken from the judgment must be granted. *The motion to dismiss the appeal from the order refusing a new trial is denied.*" (Italics ours.)

The appellant in its bill relies on the first sentence of this judgment. Of the second it says nothing. On the contrary it endeavors, and somewhat successfully, to create the false impression that no motion for a new trial was ever made.

Second.

Bell v. Staacke, 141 Cal., 186; 74 Pac., 774, November 30, 1903.

The appeal from the order denying the defendants' motion for a new trial was heard in due course. The claim was renewed by John S. Bell that the notice of intention had been premature. The Court disposes of the argument summarily, saying (141 Cal., 189; 74 Pac., 774):

"It is insisted, preliminarily, by counsel for respondent that the motion for a new trial was properly denied by the lower court, and that the appeal from such order should be affirmed by this Court because, he claims, the notice of intention to move for a new trial was prematurely given. There is nothing in this point."

The Court proceeds to consider the evidence at length, and by the concurrence of five justices, and without dissent,

“the order denying the motion for a new trial is reversed, and the cause remanded” (141 Cal., 203; 74 Pac., 780).

Upon rehearing, on December 28, 1903, the judgment is amended so as to safeguard against a retrial of the issues covered by the findings in favor of the estate of Thomas Bell, establishing its claim for over \$50,000 against John S. Bell, and

“cause remanded for new trial of all other issues” (141 Cal., 204; 74 Pac., 380).

Third.

Bell v. Staacke, Judgment on Retrial, October 17, 1904.

The answer of these appellees sets out at length the decision (Tr., pp. 231-242) and the decree and order of sale (Tr., pp. 242-246) made by the Superior Court of Santa Barbara upon a retrial of the cause. These decide and adjudge that John S. Bell owes the estate of Thomas Bell a sum exceeding \$95,000; that the defendant George Staacke (Tr., p. 236)

“holds the legal title of the said land and premises in trust, first, as security for the payment of the sum aforesaid and the costs of the said defendants

to be taxed herein, and second, in trust for the use and benefit of the plaintiff John S. Bell,"

and appoint Jesse L. Hurlbut the commissioner of the Court to sell the 10,000-acre tract to satisfy the indebtedness (Tr., p. 243). The decree also orders a reconveyance of the 4,000-acre tract by George Staacke to the estate of Thomas Bell (Tr., pp. 242, 245).

Fourth.

Bell v. Staacke, 148 Cal., 404; 83 Pac., 245,
January 2, 1906.

John S. Bell appealed from *the decree of October 17, 1904* (entered October 28, 1904). The last day for such appellant to file his transcript on appeal was August 3, 1905. It had not been filed August 16, 1905, and the appellee here, Teresa Bell, as administratrix, etc., on that day moved the Supreme Court for a dismissal of the appeal. The motion was granted, the full bench of seven Justices concurring in the order.

"The appeal from the judgment is dismissed"
(148 Cal., 407; 83 Pac., 246).

Fifth.

Bell v. Staacke, 151 Cal., 544; 91 Pac., 322,
July 22, 1907.

John S. Bell had also moved for a new trial of the action after *the judgment of October 17, 1904*, and

then had appealed from the order denying such motion. After considering such appeal and the evidence the Court says (151 Cal., 548; 91 Pac., 324):

“The order denying plaintiff’s motion for a new trial is affirmed.”

On this appeal the appellant urged that *the judgment of June 29, 1901*, was necessarily made final by the Court’s dismissal of the appeal therefrom as premature, even though a new trial were later granted by the Supreme Court upon an appeal from the order denying a motion for a new trial. To this contention of John S. Bell the Court answers briefly (151 Cal., 547; 91 Pac., 323):

“A claim that the Superior Court had no jurisdiction to retry this case, notwithstanding that it was remanded by this Court for a new trial, is based on the fact that the appeal from the former judgment in favor of plaintiff was dismissed. This, it is said, constituted an affirmance of the judgment, preventing the subsequent giving of any other judgment. But a judgment, even although expressly affirmed on appeal, is vacated by an order granting a new trial. (See *Swett v. Gray*, 141 Cal., 83, 88; 74 Pac., 551.)

This disposes of the claim of the appellant here, advanced in its bill and in its brief on appeal, that the Supreme Court had no jurisdiction to order a new trial and the Superior Court none to retry the cause, and that the judgment of June 29, 1901, was therefore still subsisting unimpaired. In view of the appellant’s

argument (Brief, pp. 29-32, 35-52) that the Supreme Court,—in holding that reversal of an order denying a motion for a new trial vacated a judgment even though an appeal from the latter had been dismissed,—altered a well-established rule of procedure in California, we call the attention of this Court to the language used in the case of

Swett v. Gray, 141 Cal., 83, 88; 74 Pac., 551, 552,

cited in the above quotation from the last decision on appeal in *Bell v. Staacke*.

In this case the judgment was *expressly affirmed* on appeal. Yet such judgment was held vacated, when the appeal from *the order* of the lower Court *granting*, in this case, *a new trial was affirmed*, the Supreme Court saying:

“For reasons given in the foregoing opinion, *the judgment is affirmed, but this affirmance does not affect the order granting a new trial which has been affirmed, and which vacates the judgment.*” (Italics ours.)

Sixth.

Bell v. Staacke, 159 Cal., 193; 115 Pac., 221, January 9, 1911.

The last attack upon *the judgment of October 17, 1904*, once disposed of, Jesse L. Hurlbut, the Commissioner under its terms, proceeded to sell the 10,000-

acre tract as decreed. Thereupon, as stated by the Supreme Court in its decision on the last appeal in *Bell v. Staacke* (159 Cal., 195; 115 Pac., 222):

"The land in controversy was sold under the last judgment and purchased by the administratrix, Teresa Bell, the respondent herein. In due course she received a commissioner's deed of conveyance. John S. Bell and Kate M. Bell, his wife, having refused to deliver possession of the land in controversy after demand properly made, or to recognize in any way the title so purchased by the administratrix, the latter finally moved for a writ of assistance, and from the order of court directing its issuance this appeal is taken." (Italics ours.)

On this appeal John S. Bell again asserted the vitality of the stale judgment of 1901, and the lack of jurisdiction in the Supreme Court to vacate it. The Court says (159 Cal., 195; 115 Pac., 222):

"The principal contention of the defense upon this appeal is that the judgment of the Superior Court of Santa Barbara County made and given upon the first trial in July, 1901, was and is a final and conclusive determination of the rights of all the parties hereto. This is based upon the argument that because of the failure to serve Louis Jones with notice of appeal from the order refusing their motion for a new trial, this Court was without jurisdiction to entertain the appeal and to render the judgment which, in fact, it did render in 141 Cal., 203; 74 Pac., 774."

The contention is treated with slight respect by the

Court, whose judgment is (159 Cal., 197; 115 Pac., 223):

"The order appealed from is therefore affirmed."

Bell v. Staacke. The deed of July 8, 1901, by George Staacke to the Grantees of John S. Bell.

In connection with *the decree of June 29, 1901*, the bill (Tr., p. 35) alleges the execution by George Staacke, on July 8, 1901, and his delivery to C. A. Hunt,

"as County Clerk of said County of Santa Barbara, and as Clerk of said Superior Court,"

of a deed of the 10,000-acre tract to John S. Bell's grantees. Such execution and delivery is alleged (Tr., p. 35) to have been made

"under and in accordance with said judgment and decree and the order therein made and contained,"

and the delivery to the Clerk was (Tr., p. 36)

"for and for the benefit of"

such grantees of John S. Bell. Further, it is alleged (Tr., p. 36) that this deed

"became and was an absolute grant deed, transfer and conveyance of the title and fee of, in and to said tract, piece and parcel of land of 10,067.2 acres, to said James L. Crittenden and Catherine M. Bell and vested in each of them an undivided one-half of said lands and of each and every part

and portion thereof; and *that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901.*" (Italics ours.)

Not much has been said by the appellant in its brief to indicate that any reliance is placed upon the effectiveness of the said deed to convey any title, though the Court's failure to hold that it was effective is stressed (Tr., p. 333; Brief, p. 24). It is sufficient for our purpose to point out that the bill declares such deed to have been made and delivered to the Clerk of Court "*under and in accordance with*" the short-lived judgment of June 29, 1901. Upon the vacation of that judgment therefore, on November 30, 1903, it ceased to have any validity, and the Clerk thereafter held the same for the defendants, and the ninth prayer of the bill (Tr., p. 96):

"That it be adjudged and decreed that the Clerk of said Superior Court of Santa Barbara County deliver to the County Recorder of the said County of Santa Barbara the said deed of November 21st, 1901, made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden, to be by said Recorder recorded in the records of the said County of Santa Barbara;"

asks not only a vain act, but an improper and unlawful one. If it were delivered by the Clerk of Court to the complainant the defendants could compel its surrender.

California Code of Civil Procedure, sec. 957.

Di Nola v. Allison, 143 Cal., 106, 114-115; 76 Pac., 976, 979;

Ward v. Sherman, 155 id., 287; 100 id., 844.

The deed was executed and delivered by the defendants to the Clerk of Court, as they were about to appeal from the decree of June 29, 1901, to procure a stay from that judgment (Answer, pages 38-39), under the provisions of Section 944 of the Code of Civil Procedure of the State of California:

"If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the Appellate Court."

The deed acted as a stay until the judgment appealed from was vacated, when it became a nullity.

Reynolds v. Harris, 14 Cal., 668;

Di Nola v. Allison, 143 id., 106, 109; 76 Pac., 976, 977.

Bell v. Staacke. Conclusion.

There is no claim in the bill, or in the appellant's arguments supporting it, relating to the case of *Bell v. Staacke*, which has not been repeatedly disposed of by the Supreme Court of this State. There is nothing in this cause but an attempt on the part of litigants

who have exhausted all their remedies in the State courts, and the patience of those courts as well, to renew the controversy in the Federal courts upon the flimsy pretext that the tribunals of local jurisdiction have misapplied or misconstrued a State statute of procedure. The District Court, after an examination of the *whole* history of *Bell v. Staacke*, not merely of such fragments of that history as the appellant had plausibly pleaded, in effect so held. We respectfully submit that its decision is unimpeachable. If ever a suitor had his day in court, the appellant and its predecessors in interest had theirs, in *Bell v. Staacke*; if ever rights were finally adjudicated by competent authority, they have been in that case,—in favor of these appellees, and against the appellant.

Nor is the appeal strengthened by the argument (Brief, pp. 30-32, 36-52) that the appellant was, in a sense, a *bona fide* purchaser for value of the land on September 18, 1902, and therefore as a citizen of Arizona must be protected against the change claimed by it to have been made, by the State Supreme Court in *Bell v. Staacke*, 137 Cal., 307; 70 Pac., 171, in the appellate procedure prevailing in the State courts. For in this case the Supreme Court of California, upon John S. Bell's motion to dismiss the appeal from the order refusing a new trial, on the ground that the motion for a new trial had been prematurely noticed, had said:

"The premature service of a notice of intention

to move for a new trial, or a failure to serve such notice at all, might be a good reason for denying the motion, but does not deprive this court of jurisdiction to hear the appeal, nor does it constitute a reason for its dismissal upon the ground that the court has not jurisdiction to hear it." (Italics ours.)

Bell v. Staacke, 137 Cal., 307, 308; 70 Pac., 171.

And it decreed (137 Cal., 309; 70 Pac., 172):

"The motion to dismiss the appeal from the order denying a new trial is denied."

This decision and decree was made September 16, 1902. In what respect, then, can the appellant, who bought his claim from John S. Bell on *September 18, 1902*, be better off than his predecessor in interest? Even if vested rights in rules of procedure can be acquired with a purchase of an interest in land, during the pendency on appeal of an action upon which the character and degree of the very interest purchased depend, surely such rights, when acquired at least two days after a change in such rules of procedure, must be, if dependent upon the rules existing before the change, of very slight merit indeed.

The appellant would have us believe (Brief, p. 52) that the alleged change in procedure of which it complains took place no earlier than 1903, when the appeal from the order refusing a new trial was allowed.

Bell v. Staacke, 141 Cal., 186; 74 Pac., 774.

The above quotations from the opinion on the earlier (1902) hearing in the Supreme Court prove the contrary to be true. The later opinion is useful to show, however, that no such change at any time occurred in the appellate practice as that claimed by the appellant to have taken place to its damage. For it distinguishes the case there presented from those then cited by John S. Bell and now cited by the appellant here as establishing the rule of procedure alleged to have been violated, saying:

"It is insisted, preliminarily, by counsel for respondent that the motion for a new trial was properly denied by the lower court, and that the appeal from such order should be affirmed by this Court because, he claims, the notice of intention to move for a new trial was prematurely given. *There is nothing in this point. The findings and conclusions of law were filed March 6, 1901, in due time, and on March 19, 1901, defendants gave their notice of intention to move for a new trial. Some two months afterwards the judge of the lower court, on his own motion, and reciting that such findings had been inadvertently omitted, made and filed two additional findings upon two issues raised by the plaintiff's answer to defendants' cross-complaint. They were findings in favor of the defendant Theresa Bell, as administratrix, that the indebtedness of plaintiff to Thomas Bell contained no illegal charges, and that no indebtedness in favor of plaintiff against Thomas Bell, or his estate, ever existed. These were in no way connected with the findings upon which the decree in favor of plaintiff was founded, and neither party attacks them,*

nor has either party appealed from, or questioned, this part of the decree." (Italics ours.)

Bell v. Staacke, 141 Cal., 186, 189; 74 Pac., 774.

In any event, since the change, if any, in procedure, was made before, and not after, the appellant acquired its interest from John S. Bell, it becomes unnecessary to discuss the contention, mooted at length by the appellant, that such a change actually took place. For the argument certainly cannot apply to any modifications made by the State tribunals at least 48 hours prior to appellant's purchase.

The same reason makes superfluous any discussion of the applicability to the present case of the decisions of the Federal Courts refusing, the appellant claims, to grant recognition to certain opinions of State courts which upset a settled construction of State laws and thereby effect an impairment of the obligation of contracts. If the question attempted to be raised were at all germane it would be easy to dispose of it by a quotation from a recent decision of the Supreme Court of the United States:

"With this statement of the case we come to consider whether it presents any question under that clause of the Constitution which declares, 'No State shall . . . pass any . . . law impairing the obligation of contracts.' *This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power*

of the State. It does not reach mere errors committed by a State court when passing upon the validity or effect of a contract under the laws in existence when it was made. And so, while such errors may operate to impair the obligation of the contract, they do not give rise to a Federal question. But when the State court, either expressly or by necessary implication, gives effect to *a subsequent law* of the State whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law. *But if there be no such law, or if no effect be given to it by the State court, we cannot take jurisdiction, no matter how earnestly it may be insisted that that court erred in its conclusion respecting the validity or effect of the contract; and this is true even where it is asserted, as it is here, that the judgment is not in accord with prior decisions on the faith of which the rights in question were acquired.*" (Italics ours.)

Cross Lake Club v. Louisiana, 224 U. S., 632, 638.

III.

APPELLANT'S CLAIM THAT EVEN IF THE JUDGMENTS IN BELL V. STAACKE ARE NOT VOID, IT CAN ASSERT RIGHTS AGAINST THE APPELLEES. *Bell v. Savings Union*, 153 Cal., 64; 94 Pac., 225.

The appellant seeks to establish some right in itself through or under the judgment rendered in the *San Francisco Savings Union case*. Its theory, in making this attempt, is not very clear. Apparently, however, it relies on (A) the terms of that judgment itself, (B) the fact that it was rendered subsequently to the judgment on retrial of *Bell v. Staacke*, (C) the claim that title to the land being in trustees for San Francisco Savings Union there was nothing on which the judgment on retrial of *Bell v. Staacke* could operate, and (D) fraud in that the judgment in favor of San Francisco Savings Union was paid without sale of the 10,000-acre tract. We shall take up these propositions in order:

A. 1.

The Terms of the Judgment, with Respect to the Appellant Here.

The terms of the judgment itself can hardly give the appellant much satisfaction. The action in which it was given was commenced by the appellant's predecessors in interest for the purpose of having it de-

clared that the deed of trust given in 1892 by George Staacke to Campbell & Kent, as trustees for San Francisco Savings Union, was void as against John S. Bell and his successors. Not only did the action fail of its purpose, but Mercantile Trust Company of San Francisco, the successor of Campbell & Kent, was by the decree directed to sell the 10,000-acre tract and out of the proceeds to pay over \$158,000 to San Francisco Savings Union (Tr., pp. 74-81). The decree also adjudges (Tr., pp. 72, 74)

"that the above named plaintiffs Kate M. Bell and James L. Crittenden and the above named defendant to cross-complaint U. S. Oil & Land Company jointly and severally take nothing by this action."
(Italics ours.)

The appellant and its predecessors in interest were also required to pay costs (Tr., pp. 73, 81). They appealed. The judgment, however, was affirmed, with a reduction of some \$17,000 in the claim of San Francisco Savings Union. At the same time the order denying the appellants' motion for a new trial was affirmed.

Upon such a decree the appellant endeavors to establish a right in itself! Although it is to "take nothing by this action," it seeks to find in the decree a vested right to the performance, in a certain specified manner, of an obligation in whose *benefits* it had no interest.

A. 2.

The Terms of the Judgment, with Respect to the Appellees Here.

The estate and heirs of Thomas Bell, deceased, were parties defendant in the *San Francisco Savings Union case*. Their interest in the action was threefold: (a) if the deed of trust was declared void as to the 10,000-acre tract of John S. Bell, they were interested in having it declared void as to the 4,000-acre tract of Thomas Bell; (b) in any event, they wished to assert a claim that, upon sale to satisfy the indebtedness to San Francisco Savings Union, the 10,000-acre tract should be sold first, the 4,000-acre tract sold only in the event the proceeds of the John S. Bell tract failed to satisfy the bank's claim; (c) they desired to protect their rights in course of litigation in the then pending action of *Bell v. Staacke*. We shall consider the terms of the judgment with respect to their several interests in order.

(a) The judgment decreed the deed of trust valid as to the 10,000-acre tract. It also upheld its validity as to the 4,000-acre tract. The administratrix of the estate of Thomas Bell, deceased, appealed from this feature of the judgment, but without success.

(b) The estate of Thomas Bell successfully asserted its right to have the John S. Bell tract (10,000 acres) sold before sale was made of its own parcel of 4,000 acres.

From its findings the trial Court concludes as follows (Tr., p. 73) :

"That said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, is entitled to *judgment herein that so much of said piece or parcel of land described in said grant in trust as does not include said second above-described of said two several tracts of land be first sold* by said defendant Mercantile Trust Company of San Francisco in the execution of said trusts *to the end that to the extent of the proceeds thereof the amount of said promissory note and interest may be paid out of said proceeds.*" (Italics ours.)

The judgment decrees (Tr., p. 79) :

"That for the purpose of further executing said trusts *said defendant Mercantile Trust Company of San Francisco be and hereby is further ordered and directed to sell* at said time of sale mentioned in said notice or at the time to which said sale may have been postponed as the case may be, and pursuant to the terms of said notice *of the first above-described of said two several tracts of land and in case the highest amount bid therefor shall not be sufficient to pay the expenses of said sale* together with the reasonable expenses of said trusts including counsel fees of three thousand dollars and the just and full sum of one hundred and fifty-five thousand eight hundred and four 67-100 dollars with interest thereon from the date hereof, *then and in that case but not otherwise to sell at said time and place* and pursuant to said terms of said notice *the second above-described of said two several tracts of land.*" (Italics ours.)

(c) The judgment in terms recognizes the pendency of litigation between the successors of John S. Bell and those of Thomas Bell, and preserves the rights of the present appellees eventually secured to them in *Bell v. Staacke*.

The judgment on retrial of *Bell v. Staacke* was made October 17, 1904, filed October 26, 1904 (Tr., pp. 231, 242). The same Court, the same judge presiding, had then just tried the cause of *Bell v. San Francisco Savings Union*, and only a few months later, on March 14, 1905 (Tr., p. 81), was to give judgment in that cause. It was to be expected the trial Court would not jeopardize by one decree rights in litigation in the other pending case. As a matter of fact it carefully abstained from so doing.

In the case of *Bell v. Staacke*, one of the minor issues raised by the pleadings was the authority of George Staacke to execute the deed of trust whose validity was the main issue in the *San Francisco Savings Union case*. No attempt, however, was made by the Court in its second judgment in *Bell v. Staacke* to affect the deed of trust, although it did, as a matter of fact, find in that case (Tr., p. 239) :

“That the defendant George Staacke did not, in violation of any trust, or without the knowledge or consent of plaintiff, borrow of the San Francisco Savings Union \$60,000, and did not in violation of any trust or trust deed convey said land in trust to secure the payment of said \$60,000.”

Similarly, the judgment in *Bell v. San Francisco Savings Union* left the matters at issue in *Bell v. Staacke* to be determined in that case, then in course of appeal from the judgment of October 17, 1904. The decision in this case, in order to ascertain the authority of George Staacke to execute the deed of trust, necessarily traveled at length over the ground of the relations between John S. Bell and Thomas Bell (Tr., pp. 44-65), and found them to be the same as those finally ascertained in *Bell v. Staacke*. But the decision also found, with respect to *Bell v. Staacke* (Tr., p. 71):

"That said action . . . is still pending in this court . . . *and the relations between said John S. Bell and his grantees of said first above-described of said two several tracts of land on the one hand and said defendants George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the will annexed, on the other hand in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect of said first above-described of said two several tracts of land and all or any parts thereof are involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein.*" (Italics ours.)

And the judgment provides that the balance of proceeds on sale, if any, after satisfaction of the bank's claim, shall be paid

"to said defendant George Staacke, his heirs or assigns,"

which was the only decree proper or possible, since the trusts upon which George Staacke held the land, and would hold the balance of the proceeds, could be definitely ascertained only in *Bell v. Staacke*.

B.

The Argument that Judgment in the San Francisco Savings Union Case Was of Later Date than that in Bell v. Staacke.

We readily admit that judgment in *Bell v. Staacke* was given October 17, 1904, judgment in *Bell v. San Francisco Savings Union* on March 14, 1905. That the former is unaffected by the latter, in view of the recognition by the latter of the pending *Bell v. Staacke* litigation, would also seem to be too evident for argument.

The appellant, however, attempts to make the point that one judgment overlaps the other, and that the latter in point of date controls. But what of that? Granted the judgment in the *San Francisco Savings Union case* "controls," whatever that may mean, of what benefit is that to the appellant? Such judgment decrees, in set terms, that it

"take nothing by this action."

The decree destroys all the appellant's contentions, finally adjudges that George Staacke held the property on trusts favorable to Thomas Bell's rights and entirely different from those the appellant here asserted,

and places the latter where it has no rights save through

“George Staacke, his heirs or assigns.”

And such rights, if any, the Court, by the very decision upon which the appellant relies, found to be dependent upon relations which

“in respect of said first above-described of said two several tracts of land and all or any parts thereof are involved in said action (Bell v. Staacke) and constitute the subject matter thereof and are in course of judicial determination and settlement therein.” (Italics ours.)

This, we urge, would alone be sufficient reply to the contentions of appellant. There are others, however. For instance we point out, in answer to the suggestion of the appellant that the decree in the *San Francisco Savings Union case* supplanted the decree in *Bell v. Staacke* as to the issues there tried for the reason that

“If rights under former judgments are to be relied upon they must be pleaded in bar and given in evidence and in the absence of such practice the later judgment controls the former” (Brief, p. 60),

that the *decree* on retrial in *Bell v. Staacke* was dated *October 17, 1904*, filed *October 26, 1904*, whereas from a glance at the recitals of the decision in the *San Francisco Savings Union case* it appears that the latter case was *tried in March, June and September,*

1904, and that the giving of evidence had been completed on *September 23, 1904*, a month before the decree in *Bell v. Staacke* was made!

The suggestion is also repeatedly made by appellant (Brief, pp. 58-70) that Teresa Bell, as administratrix, waived any rights she might have under the final judgment in *Bell v. Staacke* by not pleading the pendency of that action in abatement in the *Savings Union case*. The answer to that suggestion is easy: There is nothing in the record to show that she did not so plead; the Court in the *Savings Union case* made findings respecting the pending action of *Bell v. Staacke* and expressly reserving the issues there under consideration, from which facts it may reasonably be presumed that the pendency of the Staacke suit had been properly pleaded. And, in any event, as the judge who presided over the trial of both actions made very clear, the distinction between the issues in the two cases made a conflict between the two decisions, or a "control" of one by the other, an utter impossibility.

We might further suggest, and we respectfully do, that if the validity or effect of the decree of October 17, 1904, in *Bell v. Staacke* had been subject to question, 1912 was neither the time nor was the *District Court* the place, nor was appellant the party, to question it. It is strange, to say the least, that relief was sought so late in a Federal court against a State judgment which had been the subject-matter of so much

litigation in the state courts. The reason is not far to seek. The state tribunals had already spoken. The appellant has sought, in a court unfamiliar with the former proceedings, relief which had been denied to it and its predecessors by other competent courts in a twenty-years' controversy. The relief desired by appellant should be sought, if at all, in an action against the Supreme Court of California, to quiet title against the clouds of two or three of its judgments!

The decree in *Bell v. Staacke* was affirmed by the Supreme Court of California July 22, 1907, over two years after the decree in *Bell v. San Francisco Savings Union* was made. No doubt was there, or has since, been cast on its validity. On the contrary, its validity has been upheld. We quote from the decision of the State Supreme Court its language further recognizing the propriety, validity and effect of the proceedings in *Bell v. Staacke*, spoken *after* the decree in the *San Francisco Savings Union case*.

On the appeal in the last named case the Court said (153 Cal., 74; 94 Pac., 229):

"In the foregoing discussion we have said nothing as to the contention of the appellants Crittenden and U. S. Oil and Land Company that the Court erred in denying them any priority as against the estate of Thomas Bell. It is found, however, that *the action of Bell v. Staacke, the pendency of which was set up in the pleadings, was still pending at the time of the decision*, and that the question of the relations between John S. Bell and his grantees on the one hand, with Staacke

and the estate of Thomas Bell on the other, in respect of the indebtedness of John S. to Thomas Bell and of the ten-thousand-acre tract are involved in said action and 'are in course of judicial determination and settlement therein.' *The judgment, accordingly, made no adjudication of the rights of John S. Bell and Thomas Bell (or their successors) as between each other, leaving the question of those rights to be determined in Bell v. Staacke.* If it could be said that Staacke had no interest in this controversy as to priorities between John S. Bell and Thomas Bell, *the finding as to the pending action (which is not attacked) clearly made it the duty of the court to reserve for adjudication in that action the matters therein involved.* (Casey v. Jordan, 68 Cal., 246; 9 Pac., 92, 305.)" (Italics ours.)

In affirming the order granting the administratrix a writ of assistance to dispossess the complainant's predecessors, John S. Bell and Kate M. Bell, of the last portion of the 10,000-acre tract held by them, the Court says (159 Cal., 195; 115 Pac., 222):

"The land in controversy was sold under the last judgment and purchased by the administratrix, Teresa Bell, the respondent herein. In due course she received a commissioner's deed of conveyance. John S. and Kate M. Bell, his wife, having refused to deliver possession of the land in controversy after demand properly made, or to recognize in any way the title so purchased by the administratrix, the latter finally moved for a writ of assistance, and from the order of court directing its issuance this appeal is taken." (Italics ours.)

Distinct issues were settled by the two cases of *Bell*

v. *Staacke* and *Bell v. San Francisco Savings Union*. The *San Francisco Savings Union* case was solely concerned with the obligations of the successors of both John S. Bell and Thomas Bell to the bank, *Bell v. Staacke* with the obligations of those respective successors to one another. Both involved some consideration of the relations between John S. Bell and Thomas Bell. But *Bell v. Staacke* was the sole decision finally adjudicating those relations and the trusts upon which George Staacke held the title to the 10,000-acre tract. *Bell v. San Francisco Savings Union* was a branch case in which a third party, the San Francisco Savings Union, was interested in a determination of the restricted question whether the execution of a single instrument by George Staacke was or was not effective to create a specific lien on the trust property. Only to the incidental extent necessary to answer that question were the relations of the Bells and Staacke necessarily involved in the branch case. The cases paralleled each other in the course of their respective trials and appeals. They were necessarily interdependent in one sense, in another they were even more necessarily independent of each other. *Both cases were decided against the appellant and its predecessors.* Both decrees have been affirmed against appellant here. In express terms, they are declared consistent one with the other. The decree in the *San Francisco Savings Union* case recites, in effect, that it does not purport to trespass on

the other case. Under *Bell v. Staacke* a sale was made and, at the end of the period of redemption, a deed executed. The validity of the title thereby conferred has been recognized by the issuance of a writ of assistance and its confirmation on appeal. If litigation of matters already litigated is ever to be discouraged, it should be in this case.

C.

Appellant's Claim that, Title Being in the Trustees for San Francisco Savings Union, There Was Nothing Upon Which the Judgment in Bell v. Staacke Could Operate.

This argument is the last ingenious attempt to discredit the title of the appellees, secured through the judgment in *Bell v. Staacke*. It ignores, as does the whole brief of appellant, the well-established principle that *it is not sufficient to maintain a bill of this character, to attack the title of the defendants. The complainant, to succeed, must allege and prove a superior right and title in itself.*

Heney v. Pesoli, 109 Cal., 53; 41 Pac., 819;

McGrath v. Wallace, 116 id., 548, 551; 48 id., 719, 720;

White v. McGilliard, 140 id., 654; 74 id., 298;

Di Nola v. Allison, 143 id., 106, 115; 76 id., 976, 979;

Williams v. San Pedro, 153 id., 44, 49; 94 id.,
234, 236;

House v. Ponce, 13 Cal. App., 279, 281; 109
id., 161.

As the Court says, in the case of *Williams v. San Pedro*, above cited, speaking of the plaintiff:

"If he had no title, he cannot complain that someone else, also without title, asserts an interest in the land (citing cases)."

It was in obedience to this principle that the appellant in its bill pleaded at such length *the judgment of June 29, 1901*, in *Bell v. Staacke*, and with such insistence alleged its finality. Now, however, since the later and final judgments pleaded by the appellees stripped the false mask of verity from that short-lived decree, the appellant makes a right-about-face. It seeks to attack the validity and effect of the *real judgment* in *Bell v. Staacke*, although heretofore it relied upon the vacated judgment, in the same case, to establish the affirmative right in itself without which it cannot recover. The appellant's present position, that a vacated judgment is effective but a final and affirmed judgment is a nullity, properly reflects the merit of its claims. Its present attempt to escape from the result of the litigation in *Bell v. Staacke* can, however, be of but little avail to it, since the only right it asserts in itself is that alleged to be derived through the vacated judgment or through the convey-

ance executed to stay, during appeal, all execution upon such judgment.

In any event, this contention, like more than one contention of the appellant, presupposes a legal condition that does not exist. The appellant asserts (Brief, p. 56):

"That Staacke had no interest in the 10,000-acre tract which could be made the subject of foreclosure and sale was definitely determined by the findings in all the actions referred to in the pleadings in the suit at bar, as well as by the Supreme Court of California in its decision on affirming the decision in *Bell, et al., v. San Francisco Savings Union*.

"Staacke, under the agreement between John and Thomas Bell, was merely a naked trustee of the legal title, but by and under the *record, title and conveyances* he was the absolute owner in fee with no outstanding right, title, interest or equity in any other person, and as such absolute owner in fee he deeded and conveyed all the title and interest that he had to the trustees of the San Francisco Savings Union, who as bona fide purchasers for value without notice took, received and held the absolute and whole title in fee free from every title, right or claim, legal or equitable, of John S. Bell and Thomas Bell. Nothing was then left in either John S. Bell or Thomas Bell, and nothing could have been left in Staacke as he never had anything but the naked legal title and all of the legal title passed out of and from him to the trustees of said San Francisco Savings Union." (Italics appellant's.)

Thus the appellant evidently seeks to throw open a door for the discussion in this court of the whole

body of mortgage and deed-of-trust law of California, a discussion which it was careful never to broach in the Supreme Court of the State on the appeals in *Bell v. Staacke*. The discussion is necessarily a futile one, and one not to be unnecessarily prolonged.

How true is it that, under California law, a deed of trust to secure an indebtedness passes the whole legal title to the trustees, the whole equitable title to the beneficiary, and leaves nothing in the trustor upon which a judgment against him can operate? We shall answer this question briefly but sufficiently for the purpose of discrediting the tardy and far-fetched theory of the appellant.

The legality in California of trust deeds to secure loans was at one time seriously questioned. When the validity was finally upheld, it was so on the ground that they had been tacitly recognized so long by the community that their existence and effectiveness had become a rule of property.

Sacramento Bank v. Alcorn, 121 Cal., 379, 382;

53 Pac., 813;

Hodgkins v. Wright, 127 id., 688, 692; 60 id., 431.

But the estate they created was immediately defined and limited. In the first of the two cases last cited (*Sacramento Bank v. Alcorn*) Justice Temple, speaking for six members of the Court, says of the trust deed (121 Cal., 383; 53 Pac., 814):

"Indeed, under the decisions, it is practically, though not in legal effect, little more than a mortgage with power to convey. *The legal title passes, but it conveys no right of possession* and the trustor may remain in possession, and, until the execution of the trust, may maintain an action to recover possession even when the trust deed is silent upon the subject of possession. (*Tyler v. Granger*, 48 Cal., 259.)

"Notwithstanding the deed of trust, *the trustor may file his declaration of homestead*, and hold the premises as such against his creditors who are not secured by the trust deed or some valid lien. (*King v. Gotz*, 70 Cal., 236.)

"Notwithstanding the trust, *the trustor may devise or transfer the property subject to the trust*. (Civ. Code, sec. 864.) *And the devisee, or grantee, acquires a legal estate* against all persons except the trustees and persons lawfully claiming under them. (Civ. Code, sec. 865.) And when the purpose of the trust ceases the estate of the trustees also ceases. (Civ. Code, sec. 871.) Under these decisions and statutes it would seem that, *while we must say that the title passes, none of the incidents of ownership attach*, except that the trustees are deemed to have such estate as will enable them to convey. *So limited, such a trust has all the characteristics of a power in trust.*" (Italics ours.)

We call the Court's particular attention to the fact that the trustor can devise or transfer the property and that his devisee or grantee acquires, not only the right of possession, the right of declaring a homestead on the property, and other rights incident to ownership, but also

"a legal estate against all persons except the trustees."

This results from the provisions of

California Civil Code, sec. 864,

permitting the trustor to devise or transfer the trust properly, and of

California Civil Code, secs. 865 and 866,

reading as follows:

865. "The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them."

866. "Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors."

The estate of the trustor in the trust property can be reached by his creditors.

"It is provided by sec. 688 *Code Civil Procedure*, that 'all goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, . . . are liable to execution.' The deed of trust vested or left an interest in the property in question in Thomas O. Larkin, and such interest is, under the Code, subject to sale under execution."

Kennedy v. Nunan, 52 Cal., 326, 331.

The devisee of property subject to a trust may quiet title to the real property.

Fatjo v. Swasey, 111 Cal., 628, 638; 44 Pac., 225.

The broad language of limitation used by the Court in the above mentioned case of *Sacramento Bank v. Alcorn* has not been restricted. Rather, it has been extended.

The case was followed in the memorandum decisions in

San Francisco Savings Union v. Ray, 121 Cal., XVII.; 53 Pac., 1129, and
San Francisco Savings Union v. Lee, 122 id., XVIII.; 54 id., 1130.

Instances showing its authority in more extended form follow, in chronological order:

1. The case was cited with approval upon the appeal in a decision bearing a title of familiar names, but reversed from their usual order,

Staacke v. Bell, 125 Cal., 309, 315; 57 Pac., 1012.

2. In the opinion in

Hodgkins v. Wright, 127 Cal., 688, 692; 60 Pac., 432,

it was cited as authority for the proposition that deeds of trust

“in effect . . . are mortgages with power to sell.”

3. In the case of

Herbert Craft Co. v. Bryan, 68 Pac., 1020, 1021,

the Court says:

“The passing of the legal title in such case is mostly ideal. It is deemed to have passed only for the purpose of enabling the trustee to convey a title. In all other respects the title remains in the trustor, and is still the right by which he holds that which is his. This Court, in Bank v. Alcorn, felt constrained to hold such deeds valid as security. So far only was it necessary to go.” (Italics ours.)

4. In the case of

Tyler v. Currier, 147 Cal., 31, 35; 81 Pac., 319, 321,

it is said:

“While the deed of trust in one sense passed the title, yet it did so only for the purpose of security, and was, except as to the form and the procedure by which the loan could be enforced, substantially a mortgage.”

5. The decision and language of *Sacramento Bank v. Alcorn* is approved in

Weber v. McCleverty, 149 Cal., 316, 321-322;
86 Pac., 706, 709,

where it is pointed out, however, that

“the entire estate of the trustor, *for the purposes of the trust*, must during the intervening period be vested as an estate, and not as a lien, in the trustee, otherwise he could not legally convey it in execution of the trust.” (Italics ours.)

That is, a mortgage creates only a lien in favor of the mortgagee, while a deed of trust creates an estate in the trustee. This distinction we grant, of course. But the estate in the trustee is a limited one, “for the purposes of the trust.” *The rest of the estate remains in the trustor.*

6. In the case of

Curtin v. Krohn, 4 Cal. App., 131, 135; 87
Pac., 243, 245,

it is authority, with the case last above cited, for the statement

“that trust deeds in the nature of a mortgage convey only a defeasible estate having none of the incidents of ownership except that the trustees are deemed to have such an estate as will enable them to convey. . . . They are in effect mortgages with power to sell.”

The Court continues:

“Hence, there was no reason in law or logic

why the court could not act directly, without forcing the trustee to sell and convey the premises. Under the circumstances, the plaintiffs could maintain an action to have the accounts and respective rights of the parties adjusted and the property sold, and the court could order the sale to be made by its own commissioner. *More v. Calkins*, 85 Cal., 190; 24 Pac., 729."

The deed of trust, in other words, is so closely akin to a mortgage, that a sale of the property can be decreed and carried out by the Court and *title will pass without act of the trustees!* This decision of the District Court of Appeals was reviewed by the Supreme Court on a petition for a rehearing, and the petition denied.

7. The full Court of seven Justices concurred in the decision in

McLeod v. Moran, 153 Cal., 97; 94 Pac., 604.

In this case the only question was whether a duly selected "homestead" was abandoned,—under the provision of

California Civil Code, Sec. 1243:

"A homestead can be abandoned only by a declaration of abandonment, or a grant thereof" (italics ours),—

by the execution of a deed of trust. In other words, was a deed of trust a "*grant*"?

The Court says (153 Cal., 99; 94 Pac., 605):

"While a deed of trust given simply as a security for the payment of a debt is in a certain sense a 'grant,' it cannot be held to be a grant within the meaning of that word as used in Section 1243 of the California Code."

After discussing the decisions on deeds absolute on their face, but given as security, the Court proceeds:

"These decisions are based upon the fact that such a deed, though in form a grant, is really only a mortgage, and does not convey the fee. A trust-deed of the kind here involved differs from such a deed only in that it conveys the legal title to the trustees so far as may be necessary to the execution of the trust. It carries none of the incidents of ownership of the property, other than the right to convey upon default on the part of the debtor in the payment of his debt. The nature of such an instrument has been extensively discussed by this court, and the sum and substance of such discussion is that while the legal title passes thereunder, and the trustees cannot be held to hold a mere 'lien' on the property, it is practically and substantially only a mortgage with power of sale. (See *Sacramento Bank v. Alcorn*, 121 Cal., 379, 383; 53 Pac., 813; *Tyler v. Currier*, 147 Cal., 31, 36; 81 Pac., 319; *Weber v. McCleverty*, 149 Cal., 316, 320; 86 Pac., 706.) *The legal title is conveyed solely for the purpose of security, leaving in the trustor or his successors a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them. (Civ. Code, Secs. 865, 866.) Except as to the trustees and those holding under them, the trustor or his successor is treated by our law as the holder of the*

legal title. (*King v. Gotz*, 70 Cal., 236; 11 Pac., 656.) *The legal estate thus left in the trustor* or his successors entitles them to the possession of the property until their rights have been fully divested by a conveyance made by the trustees in the lawful execution of their trust, and entitles them to exercise all the ordinary incidents of ownership in regard to the property, subject always, of course, to the execution of the trust. *This estate is a sufficient basis for a valid claim of homestead.* It was expressly held in *King v. Gotz*, 70 Cal., 236; 11 Pac., 656, that the trustor may select as a homestead property covered by such a trust-deed. The estate of the trustees absolutely ceases upon the payment of the debt (*Civ. Code*, Sec. 871), leaving the whole title in the grantor in whom it was vested at the execution of the trust-deed, or his successors, and leaving nothing in the trustees except the bare legal title of record, which they can be compelled to reconvey to the owner simply to make the record title clear. (*Tyler v. Currier*, 147 Cal., 31, 36; 81 Pac., 319.) We think it is apparent that the 'grant' referred to in Section 1243 of the Civil Code does not include a deed given solely as security for the payment of money." (Italics ours.)

8. After the earthquake and disastrous fire in April, 1906, which destroyed the public records of San Francisco, an act was adopted by the State Legislature (Stats. 1906, page 78) under which the owner of real property could maintain an action against "all persons" to establish his title of record. Its benefits were open, however, only to persons in possession of real property who had

"an estate of inheritance, or for life"

therein. It was immediately urged that a deed of trust divested a trustor of any "estate of inheritance." The argument was quickly disposed of, the Supreme Court saying, in the case of

Warren Co. v. All persons, etc., 153 Cal., 771, 773; 96 Pac., 807, 808:

"The contention of the appellants is that by the execution of the deed of trust the title in fee vested in the trustee, Mercantile Trust Company of San Francisco, and that so long as such title was held by the trustee, the plaintiff had no such estate or interest as would authorize it to maintain an action under the provisions of the act in question. . . . It is argued by appellants that inasmuch as, by the provisions of the Civil Code (Sec. 863) 'every express trust in real property, valid as such in its creation, vests the whole estate in the trustee, subject only to the execution of the trust' and the 'beneficiaries take no estate or interest in the property,' the execution of the deed of trust to the Mercantile Trust Company vested the whole estate in such trustee, and there remained in the grantor and his successors no 'estate or interest in the property,' and, necessarily, no 'estate of inheritance or for life.' . . . That such instruments do not create a mere lien or encumbrance, but vest in the trustee the legal title to the property, has been repeatedly held, and has been reasserted by this Court in the very recent case of *Weber v. McCleverty*, 149 Cal., 316; 86 Pac., 706.

"It does not follow, however, that no estate can remain in the trustor. Under section 864 of the Civil Code, the author of a trust may prescribe to whom the property shall belong, in the event of the failure or termination of the trust, and may

transfer or devise such property, subject to the execution of the trust. By the terms of section 865, *his grantee or devisee acquires a legal estate in the property, as against all persons except the trustees and those claiming under them.* Section 866 provides that every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors. While, under the code provisions, the beneficiary takes no estate, *the creation of the trust may vest an estate in the trustee, and still leave an estate in the trustor.* Under an instrument like the one in question, *the trustee takes a fee, such estate being necessary for the carrying out of the trust to sell if the debt should not be paid. But since, upon payment of the debt, the property will revert in the trustor or his successors, an interest in the property is left in such trustor. Such interest is an estate, and, as it may pass by devise or descent, is an estate of inheritance.* 'The legal title is conveyed solely for the purpose of security, leaving in the trustor or his successor a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.' (*MacLeod v. Moran, ante*, p. 97; 94 Pac., 604.)"

9. Section 1192 of the Code of Civil Procedure of California provides that a lien for the cost of a building can be enforced against the land and the interests therein unless the person "claiming an interest" in such land gives notice that he will not be liable for such cost. In a case where the trustee under a deed of trust had not given such a notice it was to his advantage, of course, to claim that he had no "interest," but

a mere encumbrance, upon the land. His claim was allowed, in the case of

Hollywood Lumber Co. v. Love, 155 Cal., 270, 271-273; 100 Pac., 698, 699.

The Court carefully restricts the language used in *Weber v. McCleverty* (*No. 5 supra*), in criticism of the earlier case of *Williams v. Santa Clara Min. Ass.* and suggesting that a deed of trust creates an estate and not a lien. It adds:

“There is good reason for treating a trust deed as an encumbrance for the purpose of this discussion. . . . The legal title is conveyed solely for the purpose of security, leaving in the trustor or his successors a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them. (Civ. Code, Secs. 865, 866.) *Except as to the trustees and those holding under them, the trustor or his successor is treated by our law as the holder of the legal title.* (*King v. Gotz*, 70 Cal., 236; 11 Pac., 656.)”

10. Late decisions dealing with cases where the estate of the trustee is alone involved, and where the Court makes it clear that *his* title is only one

“for the purposes of the trust.”

Travelli v. Bowman, 150 Cal., 587, 590; 89 Pac., 347;

Sacramento Bank v. Murphy, 158 id., 390, 395; 115 id. 232.

From the above quotations this Court can judge how meritorious is the argument of the appellant that under the laws of California Campbell & Kent, the trustees under the deed of trust executed by George Staacke in 1892 (Brief, p. 57)

“took, received and held the absolute and whole title in fee free from every title, right or claim, legal or equitable, of John S. Bell and Thomas Bell. Nothing was then left in either John S. Bell or Thomas Bell, and nothing could have been left in Staacke.”

Neither the code section, nor the cases, cited (Brief, pp. 53-56), support the proposition that the conveyance to Campbell & Kent left no estate or title in Staacke. They do not even touch upon the question.

The contention of the appellant, then, falls at the outset. The trustor, Staacke, had a substantial legal estate upon which the judgment in *Bell v. Staacke* could and did operate.

The decisions above cited dispose effectively of the appellant's bold statement (Brief, p. 72) that:

“In California, *a deed of trust has no feature in common with a mortgage* except that it is executed to secure an indebtedness and a suit for a foreclosure and sale will not lie, as the contract of the parties is that, upon default, the trustee shall sell according to the directions of the trust deed.” (Italics ours.)

Certainly the authorities cited by counsel for appellant do not support his dictum. There *is* language

in the early cases that justifies the assertion that the "legal title" is in the trustee. But in view, not only of the code sections permitting the trustor to convey *his* estate, but of the later decisions describing the breadth of that estate and of the legal title of the trustor, as well as limiting the estate and title of the trustee to its proper functions, it would seem that the inconsistent expressions antedating *Sacramento Bank v. Alcorn*, if they cannot be reconciled with that case and its successors, are overruled.

With the unnecessary proposition advanced on page 57 of the appellant's brief, that *the beneficiary* of a trust takes no estate or interest in the property, we have no particular quarrel here, though it could doubtless be questioned if that were necessary. The appellant, however, does not and cannot cite any authority for the proposition it has actually raised, that *a trustor*, who creates a trust for the single restricted purpose of giving security, thereby loses all estate and interest in the property which is the subject of the trust.

D.

The So-called Fraud in Making Payment to San Francisco Savings Union Without Sale of the 10,000-acre Tract.

The bill contains lengthy charges of fraud against Teresa Bell, as administratrix, etc., and Mercantile Trust Company of San Francisco, as trustee for San Francisco Savings Union, in that the former, on or

about June 16, 1908, paid to the latter over \$179,000 in satisfaction of the judgment recovered by the latter, being the judgment for the original \$60,000 borrowed by George Staacke in 1892, together with 16 years' interest on such sum, taxes, costs and attorneys' fees (Tr., pp. 81-92). These charges are discussed in the brief (pp. 76-84), and we shall touch upon them in passing.

The actual circumstances surrounding such payment become evident upon an examination of the various judgments and a comparison of their several dates. They were these: In January, 1906, the Supreme Court dismissed the appeal from the second judgment in *Bell v. Staacke*. In February, 1906, an order of sale on such judgment was issued out of the Superior Court of Santa Barbara. In March, 1906, the commissioner sold the 10,000-acre tract, under such judgment and order, to Teresa Bell, as administratrix, etc. In April, 1907, he executed a deed to the said purchaser. In July, 1907, the order denying the motion for a new trial of *Bell v. Staacke* was affirmed by the Supreme Court. Thereafter the right and title of Teresa Bell, as administratrix, etc., to the 10,000-acre tract was, as between herself and John S. Bell and his grantees, unquestioned (Tr., pp. 249-250). The latter thereafter had no interest in the 10,000-acre tract, consequently no interest in how or when the lien of the San Francisco Savings Union judgment on that tract was foreclosed or discharged.

When, in February, 1908, the judgment in *San*

Francisco Savings Union case was affirmed, which decreed a sale, first, of the 10,000-acre tract, second, of the 4,000-acre tract, to satisfy the amount of \$158,000, plus interest since accrued, costs, etc., the necessity for having a sale had passed. Teresa Bell, as administratrix, etc., had by this time acquired, under the judgment in *Bell v. Staacke*, all the right of "George Staacke, his heirs and assigns" in the 10,000-acre tract. She also held for the estate the Thomas Bell tract of 4,000 acres. *Both the tracts now belonged to the Thomas Bell estate.* To permit a sale of the property would be an idle thing, that could result in nothing but increased cost to the estate, the only person interested in clearing both tracts, or either tract, from the burden of the bank's judgment. *It was not only proper, but the most evident duty, of the administratrix to pay the judgment. Otherwise she might have lost to the estate not only the 10,000-acre tract, for which it had paid some \$95,000, not to mention interest lost, but the 4,000-acre tract, which it had always owned as well.* For no redemption exists after a sale under a deed of trust. *So she paid the judgment, under order of the probate Court (Tr., p. 252).* In return she received the reconveyance which at length cleared the title to the properties (Tr., pp. 252-253). There only remained the step of obtaining possession of the last portion of the 10,000-acre tract held by the appellant's predecessors, which was done by a writ of assistance and the affirmance

by the Supreme Court of its issuance (Tr., pp. 250-251).

The contention of the appellant, that it had a right to have a sale made of the 10,000-acre tract under the San Francisco Savings Union judgment, falls (1) because the only trust upon which the trustee held the property was to apply the proceeds on sale to the satisfaction of the judgment, and to pay the balance, if any, to "George Staacke, his heirs or assigns," (2) because the estate of Thomas Bell had, under decrees of Court, been established in the position of "George Staacke, his heirs or assigns," (3) because the sale being directed for the sole purpose of satisfying the judgment, it was eminently proper for the only person interested in not having a sale to pay, under order of the probate Court, the judgment without a sale, and for the trustee, whose only care was to see the judgment paid, to accept such payment in satisfaction.

IV.

THE EQUITY OF THE BILL.

It may not be amiss to point out, in connection with the insufficiency of the bill on the merits, its insufficiency as a pleading in this Court. Its inequity is apparent. The appellant endeavored to obtain by its pleading the benefit of the vacated judgment in *Bell v. Staacke* by a bald-faced and intentional sup-

pression of the fact that six subsequent judgments, in the trial and appellate courts, vacated that decree and directed results wholly different.

A further feature of the bill condemns it utterly. It admits, and *Bell v. Staacke* proves, a debt of \$95,000 due from the complainant's predecessors to the estate of Thomas Bell. It *accuses* that estate of a payment of \$179,000 in discharge of the lien, on the 10,000-acre tract, of a judgment whose finality it asserts. Yet *the bill*, though it demands the quieting of title to all the 10,000-acre tract, conveyances thereto, and the broadest relief, *makes no pretense to a tender of any part of either of these substantial sums*, increased as they now are by the interest of years! Needless to say, we mention this defect in the bill simply to indicate the character of that pleading. The appellant, we maintain, of course, has no rights to plead. But even if it did possess such rights, and had otherwise pleaded them properly, its failure to offer equity could not but lead to a refusal of its prayer for equity.

Tripp v. Duane, 13 Pac., 860.

Further, the present appellees, Hammon and van Deirse, are not parties to the old litigation. Their rights have been acquired since the judgments in *Bell v. Staacke* and *Bell v. San Francisco Savings Union*. They are in the position to say to the appellant, as did the Court in the case of

Di Nola v. Allison, 143 Cal., 106, 110; 76 Pac., 976, 977:

"A defendant who permits a final judgment against him to remain of record without questioning its validity can invoke no equity in his favor for disputing the title of one who has purchased his property in reliance upon the correctness of that judgment. (See *Hunt v. Loucks*, 38 Cal., 382; *Rector v. Fitzgerald*, 59 Fed., 808.)"

At the hearing in the Court below the existence of all the judgments, orders and decrees pleaded in the answer was admitted by the appellant's counsel. While we are touching on the failure of the bill to state an equitable cause of action, and lest it should escape the Court's notice, we call the Court's attention to the *two judgments of dismissal secured by the appellant* on two several occasions, in 1910 and 1911, respectively, immediately before the trial of actions in the Superior Court of Santa Barbara brought by the appellant itself and involving the same issues sought to be raised in the present bill (Tr., pp. 253-255).

We also point to the fact that in all the litigation in *Bell v. Staacke*, save the appeal from the order granting a writ of assistance, the present solicitors of appellant were the attorneys for the appellant and its predecessors. The theories they now advance have been held and advanced by them for twenty years. Those theories, as well as the appellant, have had their day in Court.

We respectfully submit to this Court, as to the District Court, that when *all* the orders and decisions of the State Courts are considered it becomes evident that there is no equity in the bill.

V.

CONCLUSION. A WORD ON RES ADJUDICATA.

Perhaps it would have been more logical *to commence* with a discussion of the principles applicable to this case and the present defense. But the facts and chronology of the litigation called for first attention. With the whole story of *Bell v. Staacke* and *Bell v. San Francisco Savings Union* before the Court it seems to us incontestible that the judgments pleaded are an absolute bar to any recovery under this bill, and that there was no error in the decree of the District Court so holding.

The gist of the bill is a collateral attack upon the final judgment on retrial in *Bell v. Staacke*. According to appellant this judgment, affirmed though it was itself, and as was the sale made under it as well, by the State Supreme Court was a "pretended" judgment (Brief, pp. 5, 33, 56, 60, 62, 66), a "purported" judgment (Brief, pp. 62, 63, 64), which was "void for want of jurisdiction" (Brief, pp. 5, 42), and "absolutely null and void" (Brief, p. 25).

The Supreme Court of the United States, by Mr. Justice Brewer, has answered similar suggestions by saying:

"The defendants by the proceedings which they initiated in the land office compelled the plaintiffs to institute a suit in a court of competent jurisdiction to enforce their rights. After such suit has been commenced and the defendants have been made parties thereto, and the Court has proceeded to judgment, *will the defendants be heard to say that that judgment amounts to nothing? We are clearly of the opinion that this cannot be tolerated*, that the judgment was in all respects regular, that it was conclusive as to the particular ground in controversy, and binding by way of estoppel as to every fact necessarily determined by it." (Italics ours.)

Last Chance Min. Co. v. Tyler Min. Co., 157
U. S., 683, 695.

We also respectfully cite the Court to a recent decision of the Supreme Court of California in discouragement of attacks, collateral or otherwise, upon valid judgments.

Lake v. Superior Court, 165 Cal., 182.

The principles governing Courts in their application of the doctrine of *res adjudicata* as a bar to stale and litigated demands are too well known to require elaborate discussion.

Suffice it to point out that upon a plea or answer of *res adjudicata* the Court will look at *the opinions* of the Court whose judgment is urged in defense, and, if necessary, also at *the pleadings* in the earlier cause.

Nat'l F'dry, etc. v. Oconto W. S. Co., 183

U. S., 216, 234;

McIntosh v. Pittsburg, 112 Fed., 705;

W. S. v. Norfolk & W. Ry. Co., 114 id., 683.

An attempt was made by Southern Pacific Railroad Company in a collateral proceeding to renew a contest, settled by judgment years before, as to the sufficiency of certain maps. Mr. Justice Harlan said in this case, in which he reviews the authorities on *res adjudicata*,

Southern Pacific Railroad v. U. S., 168 U. S.,

1, 48-49:

"Is this position consistent with the settled rule of law as to the conclusiveness, between parties and their privies, of the final determination by a court of competent jurisdiction of matters put in issue by the pleadings?

"The importance of this question, independently of the magnitude of the interests to be affected by our decision, and of the earnest contention of learned counsel, justifies a reference to some of the adjudged cases, showing the grounds upon which this salutary rule rests.

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken

as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

The decision in *Baker v. Cummings*, 181 U. S., 117, 124, 130, is to the same effect.

In the words of Judge Buffington, in the case of *McIntosh v. Pittsburgh*, above cited (112 Fed., 709):

"It would be a perversion of the rights of non-residents and of the jurisdiction, and power of federal courts, if, under the claim of nonresidence, this property owner could again draw in question an issue which has, as against her, been already settled by the courts of the state. There is a time when litigation should close, and, the question here involved having been passed on by the state court, the refusal of the federal to relitigate the issue is in accord with the spirit of that wholesome maxim, '*Interest reipublicae ut sit finis litium.*'"

We submit the following propositions to be correct and to support, individually as well as collectively, the decree of the District Court here appealed from:

1. That decree properly and finally recites the terms of the stipulation entered into by counsel, before the District Court, prior to the hearing on the special defenses.

2. The judgment of *June 29, 1901*, in *Bell v. Staacke*, upon which appellant founds its right, was vacated *November 30, 1903* (*Bell v. Staacke*, 141 Cal., 203; 74 Pac., 780).

3. The judgment of *October 17, 1904*, on retrial of *Bell v. Staacke*, was affirmed *July 22, 1907* (*Bell v. Staacke*, 151 Cal., 544; 91 Pac., 322). The appellees' title and possession, acquired under it and confirmed by the State Courts, will not be questioned by this Court.

4. The judgment in the *San Francisco Savings Union case* does not in the slightest degree affect the litigation in *Bell v. Staacke*, because, first, the issues in the *San Francisco Savings Union case* were narrower than in *Bell v. Staacke*, and were raised in a different connection and between different parties; second, the reservation of issues and matters then pending in *Bell v. Staacke*, made in the judgment in *San Francisco Savings Union case*, is express and explicit; third, the two judgments are not in conflict, either in terms or effect. The same trial judge tried both cases and drew the line between their different scopes of operation. His distinction was upheld by

the Supreme Court (*Bell v. San Francisco Savings Union*, 153 Cal., 64; 94 Pac., 225).

5. The judgment in *Bell v. Staacke* had, in spite of the existence of the trust deed, an estate upon which it could effectively operate, that is, *the substantial legal estate* reserved and preserved by the laws and decisions of California to the trustor whose conveyance in trust, for the purpose of security, vests in the trustee only such estate as is absolutely essential for the *limited purposes* of such trust.

6. The appellant could not recover on its bill, and the defense of *res adjudicata* is here absolute, because:

(a) The bill pleads no right in appellant save one based upon a theory that the State Courts have repeatedly erred in a construction of a State statute of procedure;

(b) The judgments pleaded by the appellees, and the opinions of Court supporting them, show that a long litigation in the State Courts has finally resolved in favor of the appellees the very questions the appellant now seeks to renew in a Federal tribunal; and

(c) The bill, by its patent subterfuges of evasion and suppression, while purporting to plead the *Bell v. Staacke* litigation, and by its prayer for relief without tender of the amounts of the two judgments paid by the appellees, fails to state such a cause of action as is entertainable by a court of equity.

For these reasons, and for the other reasons stated in the foregoing brief, we respectfully submit that the decree appealed from should be affirmed.

CHARLES W. SLACK and
CHAUNCEY S. GOODRICH,
Solicitors for said Appellees W. P. Hammon
and F. C. van Deinse.

No. 2415.

4

**United States Circuit Court
of Appeals,
For the Ninth Circuit.**

U. S. OIL & LAND COMPANY,
a Corporation,

Appellant,

vs.

TERESA BELL, as Administratrix of the
Estate of Thomas Bell, Deceased, et al.,

Appellees.

BRIEF FOR APPELLEES

T. Z. BLAKEMAN,
PETER J. CROSBY,
Solicitors for Appellees.

Filed

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OCT 5 - 1914

....., Clerk.

By F. D. Anderson, Deputy Clerk.

United States Circuit Court of Appeals,

For the Ninth Circuit.

U. S. OIL & LAND COMPANY, a Corporation,
Appellant,

vs.

TERESA BELL, as Administratrix of the Estate
of Thomas Bell, Deceased, et al.,
Appellees.

BRIEF FOR APPELLEE

Teresa Bell, as Administratrix, etc., and the other
Appellees represented by Solicitor T. Z. Blake-
man, Esq., and for the Appellees represented
by Solicitor Peter J. Crosby, Esq.

STATEMENT OF THE CASE.

Inasmuch as the Statement of the Case by Appel-
lant is partial and in several particulars erroneous,
these Appellees set forth here a concise abstract of
facts, from the Record, which present and illustrate
the questions involved in this appeal.

The following is a copy of the Decree appealed
from, to wit:

(Title of Court and Cause.)

DECREE.

This cause came on to be heard in the District Court of the United States, for the Southern District of California, Southern Division, the Honorable Frank H. Rudkin, District Judge of the United States for the Eastern District of Washington, duly presiding, on the 20th day of March, A. D. 1913, upon the defenses heretofore presentable by plea in bar made in the pleadings to the bill of complaint on file herein as follows: the joint and several answer of the defendants, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, and Teresa Bell, individually; the joint and several answers of the defendants, Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, John Lewellyn Auzerai and Peter J. Crosby; the joint and several pleas in bar of the defendants W. P. Hammon and F. C. van Deinse, heretofore overruled; and the joint and several answers of the said defendants W. P. Hammon and F. C. van Deinse; and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all proceedings taken and acts done thereunder were taken and done, substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of the defend-

ants W. P. Hammon and F. C. van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;

Now therefore it is by the Court ordered, adjudged and decreed that the bill of complaint herein be and the same is hereby dismissed and that the above named defendants do have and recover from the complainant their costs herein, taxed at \$.....

Dated July 17th, 1913.

FRANK H. RUDKIN, *Judge*.

(pp. 296-7 of Record.)

The appellant made a motion to "correct and modify" said decree, based upon the affidavit of James L. Crittenden, by striking out of the decree the recital of the admission and stipulation of the complainant and substituting therefor that the complainant and defendants admitted and stipulated, "that the *papers* purporting to be copies of judgments, orders and decrees, alleged or claimed to have been rendered and entered" in the State Courts, "are substantially correct copies thereof." (Record pp. 298-302.)

The motion was opposed by the affidavits of T. Z. Blakeman, Peter J. Crosby and Chauncy M. Goodrich, solicitors for the defendants. (Record pp. 304-319.)

There was a reply affidavit by said James L. Crittenden. (Record pp. 320-22.)

On December 8th, 1913, the said District Court made its order denying the motion to modify said decree, "except as to the matters and things covered by the amendment to said decree this day signed and filed herein." (Record p. 324.) The amendment to the decree is as follows, to wit:

(Title of Court and Cause.)

CERTIFIED COPY OF MODIFICATION OF DECREE.

This cause came on this day to be heard on motion of the complainant to modify the following recital contained in the decree heretofore rendered and entered in this cause on the 21st day of July, 1913, namely:

"And at the said hearing, it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each of the said several answers, and particularly in the first defense set out and made in the said joint and several answer of the defendants, W. P. Hammon and F. C. Van Deinse."

And the Court being fully advised in the premises, it is considered, adjudged and decreed that said recital be, and the same hereby is modified by adding thereto the following:

"But the complainant did not stipulate or admit that such judgments or decrees were valid or binding, or that the said several courts had jurisdiction to render or enter the same."

It is further ordered and decreed that this modification and order be entered nunc pro tunc as of July 21, 1913.

Done in open court this 8th day of December, A. D. 1913.

FRANK H. RUDKIN, *Judge*.

(Record p. 323.)

Thereupon on the same day, an Order of Court was made and entered denying the motion to modify the decree (p. 324 of Record).

The said order of Court denying the said motion to "correct and modify" the decree was not excepted to by complainant and the making of said order denying said motion was not and is not assigned, by the appellant, as error, though there are thirty-nine assignments of error (Record pp. 324-341). The appeal is from "the decree entered July 21, 1913, and modified by order and decree entered eighth day of December, 1913." (Record pp. 341-2.) There is no appeal from the order or decree denying the motion of complainant (appellant) to correct and modify the said decree dismissing the bill of complaint.

Therefore there is no question before this, Appellate, Court as to the correctness of the said decree in its recital of the admission and stipulation of the complainant. The only question for this Court, we contend, is, can the decree of the lower Court, based upon "each and all of the judgments, orders and decrees of the Supreme Court and Superior Courts of California, and all proceedings and acts taken and done thereunder as set forth and described in each

the said several answers of the defendants," be sustained, it being admitted and stipulated by the complainant in the lower Court that "each and all of the said judgments, orders and decrees of the Courts of California were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each of the said several answers" of the defendants, enumerated in said decree, and "it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses and decree thereupon entered accordingly." (Record pp. 296-7.)

Confirmation of the foregoing statement and correctness of contention aforesaid of these appellees is found in the several minute entries of the hearing by the lower Court, which resulted in the said decree dismissing the bill of complaint. Minute entries of said hearing were made three separate times (Record pp. 289-290) and in each instance the entry is the same, to wit:

"This cause coming on this day to be heard separately on the special defense, viz: previous judgments, etc., as set up by the bill and answer."

Then follows the names of counsel who appeared and argued "said special defense" and the last of said minute entries recites: "*it is ordered that said cause be and the same is hereby submitted to the Court for its consideration and decision on said special defense.*" (Record pp. 290-91.)

No objections were made or exceptions taken to said entries.

Furthermore, the recital in said decree as to what admission and stipulation was made presents a question of fact which this Court will not reconsider.

The defendant, Teresa Bell, individually and as administratrix, with the other defendants represented by her solicitor, demurred to the bill of complaint on the ground that it appeared from the bill that the complainant was not entitled to the relief prayed for (Record p. 101).

Other defendants also presented general demurrers. The Court overruled said demurrers (Record p. 175). We shall contend that if the decree of dismissal could not be sustained on the bar of the judgments, orders and proceedings thereunder taken as set forth in answers and admitted to be substantially correct, still the decree must stand, because the bill of complaint does not state a cause for equitable or any relief at the hands of the lower Court.

As the defendants' rights rest mainly on the final judgment in *Bell vs. Staacke* and the sale thereunder of the property in controversy therein and herein, a correct statement of the issues and material facts involved in that action as well as in *Bell vs. San Francisco Savings Union*, is due the Court, though we might be content to point solely to the said final judgments and to the identity of the subject matter and parties in that action with the same in this.

A very clear statement of those issues and facts is contained in the decision of the Supreme Court of California in *Bell vs. Staacke*, 141 Cal., 194-202, 74 Pac. Rep. 774, made in December, 1903, which concluded with an order for a new trial. The facts are set forth more in detail in the decision of the California Superior Court for Santa Barbara County in *Bell vs. San Francisco Savings Union et al.*, as copied in complainant's bill (Record pp. 39-72), which became final by the affirmance by said

Supreme Court February, 1908, of the order denying the U. S. Oil & Land Company a new trial.

153 Cal. 64; 94 Pac. Rep. 225.

The materials facts are also set forth in the Findings and decision of said Superior Court made October 26th, 1904, on the third trial of *Bell vs. Staacke*, to wit, the new trial ordered by the Supreme Court as aforesaid, and copied into the answer of the defendants, Van Deinse and Hammon herein, at pages 231-242 of the Record, which Findings became final July, 1907, on the affirmance by said Supreme Court of the Order denying plaintiff's (complainant's grantor) motion for a new trial. 151 Cal. 544, 91 Pac. Rep. 322. (Error in Record p. 282 recites Thomas Bell as owner of the land there referred to instead of "plaintiff," and omits description of the other tract owned by Thomas Bell.)

For the convenience of the Court, we recite here the material facts relative to the said case of *John S. Bell vs. George Staacke et al.*

Thomas Bell was the uncle of John S. Bell, had educated him, and in 1874 gave him a tract of land situate in the northern part of Santa Barbara County, California, containing 14,000 acres. Thomas thereafter loaned and advanced money to John until 1885, when John's indebtedness was over \$50,000.00. They had a settlement then, resulting in John reconveying to Thomas 4000 acres of said land. The two tracts thereafter became known as the 4000 acre and the 10,000 acre tract. Thomas continued to honor his nephew's drafts, but always debited him with the amounts with interest.

In 1887, during a boom in Southern California lands, John and Thomas Bell united in a sale of the said two tracts to one Grover, on terms one-fifth cash and the balance in four equal yearly in-

stallments. John's portion of the cash payment was applied on his indebtedness and left a balance of \$25,500.00 still due Thomas. Grover's notes for the deferred payments on both tracts, secured by mortgage on same, were made payable to Thomas. Thomas and John then entered into a written agreement dated August 27th, 1887 (recited in Findings in *Bell vs. San Francisco Savings Union*, p. 49 of Record), which recited the sale of their respective tracts, the price and terms, the application of the cash payments and the balance due Thomas, and provided that Thomas should hold the said notes for the deferred payments on John's land as security for said balance of \$25,500.00, and as security for any future loans and advances.

Grover failed to meet the first installment, and Thomas Bell began foreclosure suits in his own name on both said tracts. In this situation, Thomas and John agreed orally with Grover to release him from the obligation of said notes and mortgages, in consideration of Grover reconveying the lands. In carrying out this agreement, Grover, at the request of the Bells, conveyed by deed, dated March 7th, 1889, both said tracts to George Staacke, who was the bookkeeper and confidential agent of Thomas Bell. Thomas thereupon surrendered all the notes to Grover, released the mortgages, and dismissed the foreclosure suits.

Staacke was put in possession of both tracts, but the management was under the control of Thomas through a superintendent appointed by him with the consent of John. The proceeds of both tracts went to Thomas Bell, but the accounts were kept separate, those from the 4000 acre tract going directly into Thomas' individual account, those from the 10,0000 acre tract going into John's account with Thomas. John continued thereafter to draw from Thomas more than the net proceeds of his

land amounted to, Thomas rendering yearly to John a statement of his account, which statements were always approved by John. This state of affairs continued until the death of Thomas in October, 1892. At the close of 1891, John's indebtedness to Thomas was over \$100,000.00.

In February, 1892, Thomas wrote John that it was inconvenient for him to be out of the large sum of money that John owed him and that he had borrowed \$60,000.00 of the San Francisco Savings Union on the security of his (John's) land and his own. The \$60,000.00 so borrowed was placed to the credit of John. Thomas, in borrowing the money, caused Staacke to make his note to the Savings Union, and which he endorsed, and to convey by deed of trust both tracts of land to Campbell and Kent, trustees for the Savings Union, as security for the payment of the said sum of \$60,000.00.

John accepted the credit and acquiesced in all that Thomas had done. John continued thereafter to overdraw his account until the death of Thomas October 16th, 1892, when the balance due from John exceeded \$52,000.00.

Shortly after the death of Thomas, John presented to the executors of the will of Thomas a claim against the Estate of Thomas. The claim was, in effect, that Thomas had agreed to hold and manage his 10,000 acre tract, receive all the rents and profits thereof until a contemplated railroad through the land should be completed within four years or until a sale of the land could be made and to pay him (John) the sum of \$360 each month, independent of what the rents and profits of said land might be and that said land and the rents and profits thereof should be charged with the payment of said monthly sum.

Demand was made that the executors should continue to make the advances until the expiration of the four years.

The executors rejected the claim, and in March, 1893, John began the suit of *John S. Bell vs. George Staacke et al* in the Superior Court of Santa Barbara County to enforce his said claim (this is the action so often referred to as *Bell vs. Staacke*.) The complaint was verified by the plaintiff, the executors of the will of Thomas Bell as such, and Staacke individually were made defendants. It set forth the claim aforesaid; alleged that Staacke held the 10,000 acres in trust for plaintiff and *in trust for Thomas Bell according to the beneficial interest of Thomas Bell*; that the monthly payments of \$360 were a lien and charge upon the said land, and that it was agreed between plaintiff and Thomas Bell that the said monthly allowance should continue until the sale of said property, and should be, with other amounts theretofore advanced and to be thereafter advanced by Thomas Bell to plaintiff, charged to plaintiff, to be reimbursed by him to Thomas Bell out of the proceeds of such sale.

The executors of the will of Thomas Bell and Staacke answered, denying that Thomas Bell ever made any agreement to pay or advance to the plaintiff any monthly sum or allowance.

The executors and Staacke with their answer filed a cross-complaint in which they alleged the indebtedness of John to Thomas Bell, and the fact that the 10,000 acres belonging to John was held in the name of Staacke in trust, first as security for the payment of John's said indebtedness; prayed for judgment against the plaintiff for the amount due and for sale of the 10,000 acres and the application of the proceeds of the sale to the payment of the amount found due from plaintiff, and for general relief.

The action remained in this state of the pleadings until June, 1897. There was no difference then between the parties as to the trust for which Staacke held the title to the 10,000 acres, except that Staacke and the executors denied that the said land was charged with any payments to be made to John by the Estate of Thomas Bell. John did not want the land forced to sale, and the executors were willing for him to have time to effect a favorable sale. In December, 1896, John conveyed the 10,000 acre tract to his wife, Catherine M. Bell, alias Kate M. Bell.

Early in 1897, John employed James L. Crittenden as his attorney, and joined his wife in conveying to Crittenden an undivided one-half of the 10,000 acre tract.

On June 9th, 1897, Crittenden, as attorney for John, with Richards & Carrier, his attorneys then in the pending suit, filed an amended and supplemental complaint changing entirely the object and purpose of the action. The said amended complaint alleged, in substance, that Staacke held the 10,000 acre tract solely in trust for John and to convey to John, on demand; denied that John was, or had been, indebted to Thomas in any amount, and prayed that Staacke be compelled to convey the said land to plaintiff, freed from any claim or lien in favor of the Estate of Thomas Bell. In this amended and supplemental complaint, John S. Bell, by his new attorney, attacked the said deed of trust; alleged that Staacke had, in violation of his trust, borrowed \$60,000 from the San Francisco Savings Union and had, in violation of his trust, conveyed the land to the Savings Union trustees as security, and that Staacke and Thomas Bell had appropriated to their own use the said \$60,000.00. But, as neither the San Francisco Savings Union nor the trustees in the said deed of trust were made parties defendant in the said amended and supplemental complaint, or

otherwise made parties to that action, nothing came of the said attack therein on the said deed of trust.

Staacke and the executors answered the amended and supplemental complaint, denying its material allegations. The plaintiff filed an amended answer to the cross-complaint of Staacke and the executors, conforming to the new theory of his case.

On these pleadings the action of *Bell vs. Staacke* was *first tried*, in June, 1897, before Judge Day. On conclusion of the trial, and after submission of the case, Judge Day filed a written opinion in favor of the executors on their cross-complaint. There was some delay on the part of the defendants to have the formal findings and decision entered, and thereafter, on motion of the plaintiff, based on a trivial informality in the proceedings at the trial, the said Judge vacated the submission and restored the case to the trial calendar. Thereafter Executor Maxwell resigned and Staacke became sole executor of the will of Thomas Bell. In March, 1900, the powers of Staacke as executor were suspended by the Court having charge of the administration of the Estate of Thomas Bell, to wit, the Superior Court for the City and County of San Francisco, and Teresa Bell, the widow of Thomas Bell, was appointed special administratrix of said estate. She remained such special administratrix until the Supreme Court of California had, on Staacke's appeal, affirmed his removal as executor, and thereupon, on February 19th, 1902, said Teresa Bell became administratrix of said estate with the will annexed, and has ever since continued as such.

In June, 1900, the said administratrix, having been substituted as defendant in place of Staacke as executor in *Bell vs. Staacke*, brought said action to trial, and it was then tried, the *second time*, before said Judge Day. After the submission of the case on this second trial, the said Judge concluded that

Staaeke held the 10,000 acre tract solely in trust for John S. Bell and to convey the same to him on his demand, free from any lien or claim in favor of Thomas Bell or his estate. Formal findings to this effect were made and filed March 6th, 1901. Proof was made at this trial that John S. Bell had, by deed dated December 22nd, 1896, conveyed the said 10,000 acre tract to his wife, Catherine, alias Kate M. Bell, and that John and his said wife had, by joint deed dated June 12th, 1897, conveyed to James L. Crittenden an undivided one-half of said tract, and thereupon an order of Court was made that said James L. Crittenden and Kate M. Bell be permitted to prosecute the said action in the name of the plaintiff, John S. Bell, for their benefit.

Judgment, following said findings, was filed in said action June 29th, 1901, and entered of record July 9th, 1901, directing Staaeke to convey to Catherine M. Bell and James L. Crittenden each an undivided half of said 10,000 acre tract. Judge Day, in his said findings, held that John S. Bell was indebted, personally, to Thomas, at the date of his death, in the sum of \$52,120.15, and the judgment also was that the administratrix have and recover of John S. Bell the said sum with interest thereon from October 18th, 1892.

The defendants in due time, to wit, March 19th, 1901, moved for a new trial; their motion was denied June 7th, 1901, and on July 8th, 1901, said defendants gave notice of appeal to the Supreme Court from the Order denying their motion for a new trial and from all of said judgment, except that part which adjudged that John S. Bell was indebted to Thomas Bell.

The plaintiff moved the Supreme Court to dismiss both appeals. The Supreme Court granted the motion to dismiss the appeal from the judgment on the ground that that appeal was premature; i. e.,

was taken before the judgment had been copied into the Judgment Book, *but denied the motion to dismiss the appeal from the Order denying the motion for new trial.*

Bell vs. Staacke, 137 Cal. 307; 70 Pac. Rep. 171.

When the appeal from the Order denying the motion for a new trial was heard by the Supreme Court, the Court, in its decision, went into the merits of the case fully, reversed the Order denying a new trial, and ordered a new trial as to all issued except the issue involving the amount of indebtedness of John Bell.

Bell vs. Staacke, 141 Cal. 186; 74 Pac. 774.

Under the Order of the Supreme Court last aforesaid the action came to trial again and for the *third time*, in April and May, 1904, before Judge Taggart. The case was fully tried again on all the issues made by the pleadings, except as to the issue involving the amount of the indebtedness of John Bell to Thomas Bell, that issue having been already determined on the former trial in favor of the Estate of Thomas Bell and the amount fixed at \$52,000.00, as hereinbefore stated. The findings and decision of Judge Taggart were made and filed October 26th, 1904, in favor of the administratrix of the Estate of Thomas Bell, on the said cross-complaint of the defendants. These findings and decision of Judge Taggart are copied in full in the answer of the defendants, Hammon and Van Deinse herein (Record pp. 231-242). Judgment was entered on the said findings and decision on the 28th of October, 1904. That judgment declared that a lien existed in favor of the Estate of Thomas Bell upon the 10,000 acre tract, for the payment of the said indebtedness of John S. Bell. At the time of the making of the said decree, the indebtedness of John S. Bell, with interest thereon, amounted to \$95,901.00.

A commissioner was appointed by the Court to make the sale. The said decree and Order of Sale are set out in full in the said answer of the defendants, Hammon and Van Deinse herein, on pages 241-46 of the Record. There was a motion for a new trial made on behalf of the plaintiff, John S. Bell, by his attorney and grantee, James L. Crittenden, which motion was denied and an appeal was taken to the Supreme Court from the said judgment, and also from the Order denying a new trial. The appeal from the judgment was dismissed by the Supreme Court because of the failure of the appellants to file a transcript on appeal within the time allowed.

Bell vs. Staacke, 148 Cal. 404.

The appeal from the Order denying a new trial was heard by the Supreme Court in April, 1907, and its judgment given July 22nd, 1907, affirming the Order of the Superior Court denying the said motion made on behalf of plaintiff for a new trial.

Bell vs. Staacke, 151 Cal. 544.

There had been no stay bond given by the plaintiff, John S. Bell, or by his grantees, James L. Crittenden and Catherine M. Bell, upon either of the appeals taken by them as aforesaid; so, when their appeal from the judgment last aforesaid was dismissed by the Supreme Court January 2nd, 1906, the defendant, Teresa Bell, as administratrix of the Estate of Thomas Bell, proceeded to have the said judgment executed by an order of sale issued on said judgment, and thereupon the commissioner appointed by the said judgment to make the sale of the said land, acting under the authority of the said judgment and order of sale, advertised the 10,000 acre tract for sale in the manner provided by law, and on the 5th day of March, 1906, offered the said tract of land for sale at public auction, in accordance with the provisions of said judgment and the laws of the State of California.

At that sale, Teresa Bell, as administratrix of the Estate of Thomas Bell, deceased, became the purchaser, she bidding therefor the total amount of the indebtedness of John S. Bell as determined by the said judgment, which, with the interest thereon, then amounted to something over \$109,000.00, and the costs which had been allowed the defendants, and the expenses of the sale. She received the commissioner's Certificate of Sale, which was duly recorded as required by law, March 6th, 1906.

The laws of California, at the time that the lien of Thomas Bell upon the 10,000 acre tract was created, allowed the owner of real estate, or any interest therein, six months in which to redeem under any sale made on foreclosure of mortgage or any other lien. But, shortly before the judgment last aforesaid was rendered, the law of California, as to redemption of lands from execution and foreclosure sales, was amended so as to give the owner of the same, or of any interest therein, one year in which to redeem from such sales.

In August, 1906, shortly before the six months time for redemption from the said sale of March 5th, 1906, would expire, the said Catherine M. Bell, as grantee of the said John S. Bell, moved the Superior Court in the said action of Bell against Staacke to enjoin the said commissioner from executing a deed to the purchaser as aforesaid at the expiration of six months, claiming as ground of her motion that the law as amended gave her twelve months time to redeem. The said Court sustained her motion and made its Order restraining the commissioner from making any deed of conveyance to the purchaser aforesaid, until after the expiration of twelve months from the date of the commissioner's sale aforesaid. Thus the plaintiff, John S. Bell, and his grantees obtained a full period of twelve months in which to redeem from the said

sale. The twelve months expired and no redemption had been made. Thereupon the said commissioner, by deed of conveyance dated April 8th, 1907, conveyed to the said purchaser, Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, the said 10,000 acre tract, which deed of conveyance was recorded in the office of the County Recorder of the County of Santa Barbara, State of California, on the 8th day of April, 1907. This deed purported in terms to convey the entire tract of 10,000 acres.

This concludes the statement of the material facts relative to the case of *Bell vs. Staacke*.

We now state the material facts relative to the case of *Bell vs. the San Francisco Savings Union et al.* The findings and judgment in said action are copied in full and substantially correct in the complainant's bill of complaint herein.

Findings and Decision, at pages 39-72, and the Judgment, at pages 74-81 of the Record.

The action was begun in August, 1898, and after the first trial of the case of *Bell vs. Staacke*. The plaintiffs were Kate M. Bell, the wife of the said John S. Bell, and James L. Crittenden. The defendants named in the complaint were San Francisco Savings Union, Edward B. Pond and Thaddeus B. Kent (the two latter being at that time the trustees in the said deed of trust), George Staacke, Teresa Bell, and George Staacke and John W. C. Maxwell as executors of the will of Thomas Bell, deceased. The several heirs of Thomas Bell were also made defendants, as well as Teresa Bell as guardian of the minor heirs of Thomas Bell. But the heirs of Thomas Bell and the guardian aforesaid were not served and no appearance or pleading was made on their behalf. The complaint was similar to the amended and supplemental complaint in *Bell vs. Staacke*. In brief, it alleged that the plain-

tiffs were, as the grantees of John S. Bell, the owners of the 10,000 acre tract; recited the sale of the said land and of the 4000 acre tract by John and Thomas Bell in 1887, to Grover; the failure of Grover to make the deferred payments, and of the arrangement between Grover and John and Thomas Bell for a reconveyance of the lands in consideration of Grover being released from his obligation under the notes and mortgages; the carrying out of that agreement by the conveyance by Grover of the two tracts of land to George Staacke; that George Staacke thereafter held the 10,000 acre tract solely in trust for John S. Bell and to convey it to him on demand; that demand had been made on Staacke, and he had refused to convey it; that Staacke, on February 1st, 1892, in violation of his said trust, borrowed from the San Francisco Savings Union the sum of \$60,000.00, and gave his promissory note therefor, which was endorsed by Thomas Bell; and that Staacke had, in violation of his trust, conveyed by deed said 10,000 acre tract to Campbell and Kent in trust to secure the payment to the San Francisco Savings Union of the amount of the said promissory note; that the borrowing of the said money and the making of the said deed of trust was without the knowledge and consent of John S. Bell; that Staacke and Thomas Bell appropriated to their own use the said \$60,000.00; that the Savings Union, after the death of Thomas Bell and the appointment of his executors, proved a claim against the Estate of Thomas Bell upon the said note of Staacke for \$60,000.00, and that the claim was allowed by the executors and approved by the Court in the matter of the Estate of Thomas Bell, deceased; that the said claim was a valid claim against the Estate of Bell and should be paid out of the assets of said estate. Prayer—first, that each of the defendants be required to set forth the nature of his or its

claim upon the said land or any part thereof, and that all adverse claims of the defendants and of each of them be determined; second, that it be adjudged that each of the defendants has no estate or interest in said land, and that the plaintiffs, Kate M. Bell and James L. Crittenden, are each the owner in fee simple of an undivided one-half thereof; third, that it be adjudged that the 10,000 acres was deeded by Grover to Staacke in trust to convey the same to John S. Bell as owner thereof, and that Staacke received the naked legal title in trust for John S. Bell to convey the same to John S. Bell; and that Staacke had no power to borrow the \$60,000.00, or to make or execute the said deed of trust, and that the deed of trust is void and of no effect; fourth, that Campbell and Kent and Pond be ordered to make and deliver to plaintiffs a deed of conveyance of the said land; and for general relief.

The defendants, San Francisco Savings Union, E. B. Pond and H. C. Campbell, joined in an answer to the complaint. The answer is quite voluminous, but we have to call attention to two material facts or defenses set up therein:

First, that these defendants, at the time Staacke borrowed the \$60,000.00 and made the promissory note and the deed of trust to secure the same had no knowledge or information that John S. Bell had any claim or interest whatever in the 10,000 acre tract, and that they never received any knowledge or information or intimation that John S. Bell had or claimed any interest whatever in the said land, until four years after the making of the said note and deed of trust, when John S. Bell and the executors of the Estate of Thomas Bell, deceased, applied to the said Savings Union to extend the time for the payment of the said note.

The second fact in defense alleged in the said answer of the Savings Union and Campbell and

Pond was that, on the 22nd day of December, 1896, an agreement in writing was made between the San Francisco Savings Union as party of the first part and John S. Bell as party of the second part, and Staacke as trustee, party of the third part, and said George Staacke and John W. C. Maxwell as executors of the will of said Thomas Bell, whereby the time for the payment of the principal of the said promissory note of Staacke was extended until the 22nd day of December, 1898, and that the said deed of trust should be and remain a first charge on the said lands therein described, to secure the payment of the said note, and that the said agreement, before its execution, was submitted to and examined and approved by said John S. Bell and by his attorneys, and was executed by the said John S. Bell on the advice of his said attorneys. George Staacke and George Staacke as executor of the will of Thomas Bell, deceased, made and filed an answer January 3rd, 1899, to same effect.

The action slumbered in this condition of the pleadings until March 29th, 1902, when Teresa Bell, as administratrix of the Estate of Thomas Bell, deceased, with the will annexed (Staacke having been removed as executor) made and filed in the action, by leave of the Court, an amendment of and supplement to the answer of the defendants, George Staacke and George Staacke as executor. The said answer of the administratrix set forth substantially the same matters that were pleaded in the cross-complaint of the defendants in the action of Bell against Staacke, to wit, the sale by John and Thomas Bell, in 1887, of their respective tracts of land to Grover, part cash and balance in five equal yearly payments, evidenced by notes payable to Thomas Bell and secured by mortgage; Grover's failure to make the first deferred payment; the agreement between Grover and John and

Thomas Bell that Grover, on being released from the obligation of his notes for the deferred payments, should reconvey the lands to the owners, and that Grover thereafter, in accordance with said agreement, and at the request of John and Thomas Bell, conveyed both tracts of land to George Staacke, the bookkeeper and confidential agent of Thomas Bell; the making of the agreement of August 27th, 1887, between John and Thomas Bell, reciting the amount of indebtedness of John at that time, and that Thomas should hold the notes and mortgages made direct to him on John's land as security for the amount then due from John and as security for all future advances that Thomas might make to John; that, on the deeding of the land by Grover to Staacke, Staacke was put in possession, and that Thomas Bell continued thereafter to manage and control the same until his death; set up the borrowing of \$60,000.00 by Thomas Bell from the Savings Union and the giving of the deed of trust by Staacke to the trustees of the Savings Union as security for the \$60,000.00; the crediting of the \$60,000.00 to John on his account with Thomas, and that there remained after such credit a balance due from John exceeding \$49,000.00; that John had knowledge of and consented to the borrowing of the said \$60,000.00, and accepted the credit thereof on his account, and that he continued thereafter to receive loans from Thomas Bell until the date of the death of Thomas, when John's indebtedness amounted to the sum of \$52,120.00; that Staacke, at the time of the death of Thomas Bell held and still held the legal title to the 10,000 acre tract, in trust as security for the payment to the Estate of Thomas Bell of the said sum of \$52,120.00, with interest at the rate of seven per cent per annum.

The answer of the said administratrix then set up the pendency in the said Court of the action of

John S. Bell vs. George Staacke et al., and alleged that, on the 29th day of June, 1901, judgment of the Court in said action had been made and entered in favor of herself as administratrix upon her cross-complaint in said action and against the said John S. Bell for the sum of \$52,120.15, with interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892, and that said judgment had not been vacated, set aside, or appealed from. (The Court will note that the judgment here pleaded as having been given in *Bell vs. Staacke* was the judgment against John S. Bell personally for the said sum of money, and from which said judgment neither party in said action ever appealed; the material fact in this connection, however, is that in said answer of the administratrix in the said action of Bell against Savings Union, the pendency of the action of Bell against Staacke was alleged.)

The answer of the said administratrix further alleged that, on or about the 1st of February, 1902, the plaintiffs, Kate M. Bell and James L. Crittenden, applied to and requested the San Francisco Savings Union that it cause the trustees in the said deed of trust to proceed to sell the 4000 acre tract embraced in the description of the lands covered by the said deed of trust, and that said plaintiffs then represented to the Savings Union that, upon the sale of the 4000 acre tract by the said trustees, a sufficient sum would be realized to pay the entire amount of the principal and interest due on the promissory note of George Staacke. (It seems that the plaintiffs had, prior to the filing of the answer of the Administratrix, obtained an Order from the Court in said action, restraining the defendants, the Savings Union and the trustees in the deed of trust, from selling any of the lands described in the deed of trust, until the further Order of the Court.) That said plaintiffs further represented to the Savings

Union that they were willing that the restraining Order which had been granted in the said action, restraining the trustees from selling the said tracts of land or either of them therein, might be modified so as to release the said 4000 acre tract from the operation of said restraining Order. That the defendants, said Savings Union and Campbell and Pond, trustees, had applied, or were about to apply to the Court to release the said 4000 acre tract from the said restraining Order in order that the said trustees might proceed to sell the said 4000 acre tract under and by virtue of the provisions of the said deed of trust, thus throwing the burden of the indebtedness secured by the said deed of trust altogether upon the 4000 acre tract belonging to the Estate of Thomas Bell, while the total amount of the said \$60,000.00 borrowed, and for which the deed of trust had been given on both tracts of land, had been applied to the credit of John S. Bell.

The administratrix, in her said answer, prayed that the said restraining Order be not dissolved as to said 4000 acre tract, and that it be adjudged and decreed by the Court that the said Staacke holds the legal title to the 10,000 acre tract in trust; first, for the use and benefit of the defendant as administratrix of the Estate of Thomas Bell, to wit, as security for the payment of the said sum of \$52,120.15, with interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892, and in trust to sell said 10,000 acres and apply the proceeds thereof to the payment of the expenses of sale and of the said sum of \$52,120.15, with interest thereon, and to pay the balance, if any, to the defendant, Savings Union, or to John S. Bell or his assigns, as their rights may be made to appear.

Upon a motion based upon the said verified answer of the said administratrix, the Court in the

said action of Bell against the San Francisco Savings Union, refused to dissolve the restraining Order aforesaid until the further order of the Court.

Nothing further was done in the said action until December 20th, 1902, when the defendants, San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company, filed a cross-complaint in which they prayed "that this Court, having been vested by this action with jurisdiction with respect to two said tracts of land for the purpose of determining the issues raised herein by the complaint and answers thereto, retain said jurisdiction for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land, and for that purpose take under its direction and control the execution by defendant Mercantile Trust Company of the trust created by the said deed of trust."

Thereafter, on the application of the San Francisco Savings Union and the Mercantile Trust Company, the successors of the said trustees, to wit, on October 6th, 1903, obtained an Order of Court making the U. S. Oil & Land Company a party defendant to the cross-complaint aforesaid in said action; and thereafter, by leave of Court, the defendants, San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company made and filed their amended cross-complaint against the plaintiffs and against Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, and against the defendant to cross-complaint, U. S. Oil & Land Company.

The amended cross-complaint set forth particularly all conveyances that had passed from 1874 between Thomas and John Bell concerning the said two tracts of land; set forth the sale by Thomas

and John Bell of both tracts of land in August, 1887, to Grover; the failure of Grover to make the deferred payments, and the conveyance by Grover of the two tracts of land, by consent of John and Thomas Bell to George Staacke, in consideration of Thomas Bell surrendering Grover's notes and releasing Grover from the obligation of the said mortgage; in short, the cross-complaint followed the allegations of the answer aforesaid of the defendants, the San Francisco Savings Union et al., but further alleged that, on the 8th day of March, 1893, John S. Bell commenced an action against the defendant, George Staacke and against the executors at the time of the will of Thomas Bell, wherein he claimed to be the owner in equity of said tract of land of 10,000 acres, and demanded judgment that Staacke convey the same to John S. Bell. (Meaning said action of *Bell vs. Staacke et al.*)

That thereafter and pending said action of Bell against Staacke, by instrument in writing dated the 22nd day of December, 1896, and recorded the 31st day of December, 1896, said John S. Bell and said George Staacke, with the knowledge and acquiescence of said plaintiff, Kate M. Bell, agreed with said defendant, San Francisco Savings Union, that the time of the payment of the principal of said promissory note of said defendant, George Staacke should be extended until the 22nd day of December, 1898, and that the security therefor created by said deed of trust should be and remain a first charge on both of said tracts of land.

That thereafter, by deed bearing date the 22nd day of December, 1896, and recorded on the 18th day of June, 1897, said John S. Bell purported to convey both of said two tracts of land to said plaintiff, Kate M. Bell; that thereafter, by deed dated the 12th of June, 1897, and recorded on the 18th day of June, 1897, the said plaintiff, Catherine M. Bell,

and said John S. Bell purported to convey an undivided half of both of said two tracts of land to said plaintiff, James L. Crittenden, and to Sidney M. Van Wyck, and that, on the 26th of November, 1900, said Van Wyck conveyed to the plaintiff, James L. Crittenden, all his right, title and interest to or in both of said tracts of land; alleged that the trustees, Campbell and Kent, named in the said deed of trust by Staacke had been succeeded in the trust declared by said deed by defendants Campbell and Edward B. Pond, and that Campbell and Pond had been succeeded by the defendant the Mercantile Trust Company; that each and all of said changes of trustees had been duly and regularly made by resolutions duly passed by the Board of Directors of the San Francisco Savings Union; that, on the 18th day of September, 1902, James L. Crittenden, by deed purported to convey to said defendant to the cross-complaint, U. S. Oil & Land Company, the undivided one-half of said 10,000 acre tract. The prayer of the amended cross-complaint was the same as of the original cross-complaint hereinbefore stated.

The said action of *Bell vs. the San Francisco Savings Union* was brought to trial on the 13th day of June, 1904, before Judge Taggart, the same Judge before whom the third trial of *Bell vs. Staacke* was had.

The trial of *Bell vs. the San Francisco Savings Union* was begun while the case of *Bell vs. Staacke* was under submission to the said Judge. When the case of *Bell vs. the Savings Union* was called for trial June 13th, 1904, the defendant, Teresa Bell, as administratrix of the Estate of Thomas Bell, by leave of Court, filed a further amended answer, in which she alleged as follows:

“That the parcel of real property described in paragraph I of plaintiff’s complaint herein (the 10,000 acre tract) is the subject matter of litigation in an action now pending in this Court entitled *John S. Bell vs. George Staacke et al.*, No. 2826, upon the same claims of all the parties to this action, except as to the defendants San Francisco Savings Union, Henry C. Campbell, Thaddeus B. Kent, E. B. Pond and Mercantile Trust Company; that said action No. 2826 was commenced before this action and was pending when this action was commenced, and said action No. 2826 has been heretofore, to wit, April 19th to May 5th, 1904, tried and submitted to this Court for its decision; that the issues in said action No. 2826 involve the trusts upon which the defendant, George Staacke (defendant in both actions), holds the said parcel of land described in paragraph I of the complaint; that the plaintiffs herein, Kate M. Bell and James L. Crittenden, claim only herein as the grantees of the plaintiff, John S. Bell, in said former action, and an Order of Court has been heretofore made and entered in said former action permitting the said Kate M. Bell and James L. Crittenden to prosecute the said former action in the name of the said plaintiff John S. Bell; Wherefore this defendant asks that this action as between the plaintiff and herself, in so far as concerns the trusts upon which the defendant George Staacke holds the land described in Paragraph I of the complaint herein, abate or be continued until the final determination of said action No. 2826.”

This amendment to the answer of the defendant Teresa Bell as administratrix is referred to by the said Supreme Court in its decision in *Bell vs. San Francisco Savings Union*, 153 Cal., at page 74. The trial proceeded upon all of the issues made by the

pleadings, notwithstanding the last amendment aforesaid to the answer of the defendant Teresa Bell as administratrix. The trial was concluded on the 23rd day of September, 1904, and on the 31st day of October, 1904, it was finally submitted to the Court for decision. (The said Court had made its decision in *Bell vs. Staacke* October 26th, 1904.)

The Court, on the 20th day of February, 1905, made its findings and decision in favor of the San Francisco Savings Union and the Mercantile Trust Company on their cross-complaint, except that it was found that the defendant Teresa Bell as administratrix was entitled to have the 10,000 acre tract offered for sale first by the trustee Mercantile Trust Company. These findings and decision are fully set forth in the bill of complaint herein, at pages 39-72 of the Record, and the judgment upon the findings and decision is set forth in complainant's bill of complaint, pp. 74-81 of the Record.

The action of *Bell vs. Staacke* is referred to in the said findings and decision in paragraph 34 thereof, page 66 of the Record, as pending and the purpose and object of said action stated; and said action of Bell against Staacke is again referred to in said findings in paragraph 40 thereof, at page 71 of the Record, as follows:

“And the relations between said John S. Bell and his grantees of said first above described of said two several tracts of land (meaning the 10,000 acre tract) on the one hand and said defendant George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the will annexed, on the other hand, in respect of said indebtedness of said John S. Bell to said Thomas Bell, and in respect of said first above described of said two several tracts of land, and all or any parts thereof, are

involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein.”

Thus sustaining the plea in abatement made as aforesaid by the administratrix at the opening of the trial.

The judgment entered upon the said findings and decision was that the plaintiffs Kate M. Bell and James L. Crittenden and the defendant to cross-complaint U. S. Oil & Land Company, jointly and severally *take nothing by this action* (Record p. 74), and that the defendant Teresa Bell as Administratrix, etc., “take nothing by this action, except as herein adjudged.” (The exception was that the trustee Mercantile Trust Company, in proceeding to carry out the provisions of the deed of trust and sale of said lands, first offer for sale the 10,000 acre tract, and if enough was realized thereon to pay the indebtedness due the San Francisco Savings Union the 4000 acres be not offered for sale.)

The material part of the said judgment in this connection is as follows, page 75 of the Record:

“And it is hereby further adjudged that the said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute the said trusts.”

Meaning the trust declared in said deed of trust. The judgment then proceeds to direct the said Mercantile Trust Company to advertise the land for sale in accordance with the provisions and directions of the deed of trust.

There was a motion for a new trial made by the plaintiffs, and also by the defendant Teresa Bell as administratrix, etc. An Order was made denying those motions, and an appeal was taken to the Supreme Court by the plaintiffs from the judgment

and from the Order denying their motion for a new trial. An appeal was also taken to the Supreme Court by the defendant Teresa Bell as administratrix, etc., from the said judgment and from the Order denying her motion for a new trial. The Supreme Court affirmed both Orders denying a new trial, and, after modifying the judgment by reducing the amount thereof in favor of the administratrix in a sum exceeding \$16,000.00, affirmed the judgment February 14th, 1908. 153 Cal., p. 65.

Referring now to the statement of facts in *Bell vs. Staacke*, wherein it was shown that the commissioner appointed in that action to make the sale of the 10,000 acres on the foreclosure of the lien in favor of the Estate of Thomas Bell, made the sale of the said lands on the 5th of March, 1906, to Teresa Bell as administratrix, etc., and that thereafter, to wit, on the 8th day of April, 1907, and after the time for redemption had expired, the said commissioner, by deed, conveyed the said 10,000 acre tract to Teresa Bell as administratrix, etc. *It will be noted by the Court that, when the Supreme Court of California did finally, in February, 1908, as aforesaid, affirm the judgment in Bell against the San Francisco Savings Union, both said tracts of land included in the said deed of trust, to wit, the 10,000 acre tract as well as the 4000 acre tract, belonged to the Estate of Thomas Bell.*

In this connection it should be noted that the San Francisco Savings Union, after the death of Bell and the qualification of his executors, presented its claim as a creditor against the Estate of Thomas Bell, deceased, based upon the endorsement by Thomas Bell of the \$60,000 note made by Staacke to the San Francisco Savings Union. The San Francisco Savings Union had its said claim allowed as a secured claim, and therein described the security, to wit, the said deed of trust made by Staacke

to its trustees, and the said San Francisco Savings Union, in its said claim, specifically reserved the right to resort to the said security.

After the affirmance by the Supreme Court of the judgment in *Bell against the San Francisco Savings Union* as aforesaid, the administratrix of the Estate of Bell prevailed upon the San Francisco Savings Union to delay the enforcement of the said judgment, and thereafter, having realized by sale, as administratrix through the Probate Court in the matter of the Estate of Thomas Bell, deceased, of the 4,000 acre tract, sufficient funds to pay the amount of the judgment, interest and costs due the San Francisco Savings Union, applied to the said Court in the matter of the Estate of Thomas Bell, deceased, and after regular and due notice and proceedings therein, obtained an Order from the said Court authorizing and directing the said administratrix to pay from the funds of the Estate of Bell the sum of \$179,411.40 due the San Francisco Savings Union on its judgment, including interest, "in full payment of said approved secured claim *and in and for full payment and satisfaction of the amount directed to be paid said San Francisco Savings Union by the judgment in its favor of the said Superior Court of Santa Barbara County, in said action of Kate M. Bell et al., plaintiffs, vs. San Francisco Savings Union et al., defendants.*"

Thereupon and in accordance with the directions of the said Order, dated the 12th day of June, 1908, the said administratrix paid to the San Francisco Savings Union the said total sum of \$179,411.40 from the funds of the Estate of Bell, together with all expenses then due the said San Francisco Savings Union, and demanded of the San Francisco Savings Union and its trustee, the said Mercantile Trust Company, a re-conveyance of the lands described in the said deed of trust; thereupon the San Francisco

Savings Union acknowledged the receipt of the full amount due on the said judgment and directed the said trustee, the Mercantile Trust Company to, and the Mercantile Trust Company did, make, execute and deliver unto the said Teresa Bell as administratrix, etc., a conveyance of all that tract of land embraced in the said original deed of trust made by Staacke to the San Francisco Savings Union. The said payment was made by the said administratrix on June 15th, 1908, and on the same date the said deed of re-conveyance was delivered to the said Teresa Bell as administratrix, and was by her, on the same date, filed for record in the office of the County Recorder of the County of Santa Barbara.

ERRORS IN APPELLANT'S STATEMENT OF CASE.

We now call attention to some of the errors contained in the "Statement of the case in appellant's brief herein."

It is stated on page 8 of said brief that the case of *Bell vs. Staacke* was a suit brought by John S. Bell to quiet title and to compel Staacke to convey the land in controversy in the pending suit to John S. Bell.

The case of *Bell vs. Staacke* was brought, in the first instance, as shown in our Statement of the Case hereinabove, to obtain a judgment against the executors of the Will of Thomas Bell, requiring them to pay a monthly allowance of \$360 to John S. Bell, and to declare that the said monthly allowance was a lien and charge upon the said 10,000 acres. In that suit, as originally brought, as stated hereinabove, the plaintiff John S. Bell alleged in his complaint that the monthly allowance of \$360 claimed, and all other sums theretofore advanced and thereafter to be advanced by Thomas Bell to

him, were a charge upon the said 10,000 acres, to be paid out of the proceeds of the sale thereof. The allegations of the original complaint in this respect are quoted in the decision of the Supreme Court of California in *Bell vs. Staacke*, 141 Cal. at page 200.

It is erroneously stated on page 9 of said brief that Teresa Bell was a party to the cross complaint of the San Francisco Savings Union in *Bell vs. said S. F. S. Union*. The appellant at pages 10 and 11 of his brief refers to the findings and conclusions of law in said last mentioned case, and then at near top of page 11 states, "The Court found in and by said findings of fact that," etc., proceeding then to copy from the findings in *Bell vs. Staacke* on the second trial thereof, all of which findings except the amount of John S. Bell's indebtedness to Thomas Bell were negatived by the findings on the new trial ordered by the said Supreme Court.

A correct statement of the issues involved in that action and pertinent to the questions now under consideration here is contained in the statement hereinabove by these appellees, which statement by these appellees is verified by the findings of the Court in *Bell vs. the San Francisco Savings Union*, set out in the complainant's bill of complaint on pages 39 to 72 of the Record, which findings are presumed to respond to the issues made by the pleadings.

It is further stated, on page 10 of said brief that "neither decrees nor proceedings in *Bell vs. Staacke* were pleaded by any of the parties in the suit of *Bell vs. San Francisco Savings Union*."

It is correctly stated hereinabove by these appellees that the pendency of the suit of *Bell vs. Staacke* was pleaded in the amended and supplemental answer filed in said action by Teresa Bell as administratrix etc. on March 29th, 1902, and again

pleaded by her in the amendment to her said answer filed by leave of Court on the 13th day of June, 1904, at the commencement of the trial of said action; and the fact that the pendency of the said action of *Bell vs. Staacke* was pleaded in the said action of *Bell vs. San Francisco Savings Union* is affirmed in the decision of the Supreme Court of California in said action.

See *Bell vs. San Francisco Savings Union*,
153 Cal. at page 74; 94 Pac. 225.

Further, it was found as a fact by the Court in its decision in the said action of *Bell vs. San Francisco Savings Union* that the suit of *Bell vs. Staacke* was pending. The said findings in *Bell vs. San Francisco Savings Union* refer to the action of *Bell vs. Staacke* in paragraph 40 thereof, page 71 of Record, as follows:

“That said action was commenced on the 8th day of March, 1893, by said John S. Bell against said defendant George Staacke and said executors at that time of the Will of Thomas Bell, deceased, is still pending in this Court and is numbered 2826 in the Register of Actions, and the relations between said John S. Bell and his grantees of the said first above described of said two several tracts of land (meaning the 10,000 acre tract) on the one hand, and said defendant George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, on the other hand, in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect to said first above described of said two several tracts of land, and all or any parts thereof, are involved in said action and constitute the subject matter thereof, and are in course of judicial determination and settlement therein,” which practically sustains the plea in abatement by the said administratrix.

A further erroneous statement is made in the said brief to the effect as follows, to wit:

“That all the transactions had between the San Francisco Savings Union and Teresa Bell as administratrix of the Estate of Thomas Bell were had and done after the decree, directing said land to be sold and the surplus proceeds thereof paid to Staacke in accordance with the stipulations contained in the deed of trust, had become final and conclusive as to all parties.”

The controlling and main provision of the judgment of the Court in *Bell vs. San Francisco Savings Union* was as follows:

“And it is hereby further adjudged that said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute said trusts and for that purpose to publish at least twice a week” etc., “a notice of the time and place of sale,” and so forth.

Of course, if the trust could be executed without the sale of the property, or if there was a trust declared in the trust deed which authorized Staacke or his assigns to pay the debt and receive a deed of re-conveyance without a sale, it would have been the duty of the trustee, notwithstanding a direction of sale contained in the judgment, to receive payment of the debt and make the re-conveyance in accordance with the provisions of the trust deed. There was such a provision in the deed of trust and that was accordingly done as hereinbefore stated. The deed of trust in full is set out in the findings in *Bell vs. San Francisco Savings Union*, which are copied in the bill of complaint (pp. 58-64 of Record).

POINTS AND AUTHORITIES.

It was stipulated by the respective counsel herein in Lower Court preceding the hearing on the special defense of previous judgments etc. that the findings and judgment in *Bell vs. Staacke* of June 29th, 1901, and the findings and judgment in *Bell vs. San Francisco Savings Union*, were substantially correct as set forth in the bill of complaint, and that the subsequent proceedings in that action and in *Bell vs. San Francisco Savings Union*, were substantially correct as set forth in the answers of the defendants, and such stipulation was embodied in the decree dismissing the bill of complaint.

It is set forth and pleaded in the answers of the defendants that, upon the appeal by Teresa Bell as Administratrix and by George Staacke individually from the Order of the Court denying them a new trial of the said action of *Bell vs. Staacke*, that the Supreme Court of the State of California did make its judgment and Order reversing the Order of the said Superior Court denying a new trial, and did order a new trial of all issues except as to the issue involving the amount of the indebtedness of John S. Bell to Thomas Bell (p. 107 of Record). And the Order of the said Supreme Court directing a new trial was fully set forth in the decision of the Supreme Court cited in appellant's brief, page 53, to wit, in *Bell vs. Staacke*, 141 Cal., pages 203-204.

It is contended by the appellant that the Supreme Court of California had no jurisdiction or power to order a new trial in the said action of *Bell vs. Staacke* after the appeal from the judgment herein had been dismissed by the Supreme Court; and that the Supreme Court of California in ordering a new trial in *Bell vs. Staacke* after the appeal from the judgment therein had been dismissed had de-

parted from its ruling on that question theretofore. This statement is not correct. The first ruling of the said Supreme Court upon that question that we have been able to find was made in October, 1870, in the case of

Fulton vs. Hanna, 40 Cal. 278-281.

In that case there had been an appeal from the judgment by the defendants and also from the Order denying the defendant's motion for a new trial. The appeal from the judgment had been dismissed by the Supreme Court for want of prosecution; and, while the appeal from the Order denying a new trial was still pending before the Court. The plaintiff then demanded execution upon the judgment from the clerk of the trial Court, and, on the clerk's refusal, the plaintiff petitioned the Supreme Court for a writ of mandate to compel the clerk to issue the execution. The Supreme Court denied the writ of mandamus on two grounds: First, on the ground that, in the appeal from the Order denying a new trial, a sufficient stay bond had been given; and, second, on the grounds stated by the Supreme Court, as follows, to wit:

“Although an appeal from an Order denying a motion for a new trial is in a different and distinct line of proceeding from a direct appeal from a judgment, still a reversal on appeal from the Order denying a motion for a new trial and remanding the cause for retrial as effectually vacates the judgment as a reversal of the judgment upon a direct appeal therefrom * * * . The fact that a direct appeal from the judgment had been dismissed certainly does not place the appellant in any different or more unfavorable position in respect to his appeal from the Order than he would have occupied had no direct appeal from the judgment ever been taken.”

The case of *Fulton vs. Hanna*, supra, was approved in the case of *Thompkins vs. Montgomery*, 116 Cal. at page 123 (decided February, 1897), where the Supreme Court says:

“The right of the appellant to have the execution stayed pending the appeal from the Order denying a new trial is not impaired by the fact that the appeal from the judgment is dismissed.”

In the case of *Pierce vs. Birkholm* (decided January, 1896), 110 Cal. page 672, in reviewing cases there mentioned and reported in 23 Cal. 549, 28 Cal. 528, 33 Cal. 401, 62 Cal. 558, 76 Cal. 90, and 55 Cal. 419 (covering a period of time from 1863 to 1886), the Court held the said cases did not sustain the proposition for which they were cited by the counsel, to wit:

“That the granting of a motion for a new trial vacates the judgment notwithstanding an appeal was taken from the Order granting a new trial.”

The Court, however, said further:

“They (the said cases cited) do sustain the general proposition, not questioned, that the effect of an Order granting a new trial is to set aside the judgment.”

Thus it appears that when the Supreme Court in the case of *Bell vs. Staacke*, 141 Cal. page 203, reversed the Order of the trial Court denying the defendants' motion for a new trial and ordered a new trial, it did not assume any power which it had theretofore refused to exercise.

This appellant, or rather its grantor, James L. Crittenden, in the last appeal to the Supreme Court of the State of California, in *Bell vs. Staacke*,

raised *this very question*. The said Court, in disposing of the same (*Bell vs. Staacke*, 151 Cal. at page 547) said:

“A claim that the Superior Court had no jurisdiction to retry this case, notwithstanding that it was remanded by this Court for a new trial, is based on the fact that the appeal from the former judgment in favor of the plaintiff was dismissed. This, it is said, constituted affirmance of the judgment preventing the subsequent giving of any other judgment. But a judgment, even although expressly affirmed on appeal, is vacated by an Order granting a new trial.” (Citing *Sweet vs. Grey*, 141 Cal. 83-88, 74 Pac. 551).

In the case cited, *Swett vs. Grey*, there was a judgment in favor of the plaintiff from which the defendant appealed; the trial Court granted the defendant a new trial. From the Order granting a new trial plaintiff appealed, and the Supreme Court, on November 6th, 1903, affirmed the Order granting the defendant a new trial. Then the defendants appealed from the judgment, came to hearing before the Supreme Court and the judgment was affirmed, the Court saying, at page 88:

“The judgment, so far as this appeal is concerned, should be affirmed.”

Then followed, at page 88, the Order or judgment of the Supreme Court, as follows:

“For the reasons given in the foregoing opinion, the judgment is affirmed, but this affirmance does not affect the Order granting a new trial which has been affirmed and which vacates the judgment.”

The ruling by the Supreme Court of California on the question in the cases aforesaid is in strict conformity to the statutory provisions on the subject in the State of California.

Part 2, Chap. VII., Sec. 658 to 663, C. C. P. of Cal.

From these provisions it appears that a motion for a new trial is a new and independent proceeding in an action, which can only be instituted after a trial has been had and a conclusion or judgment reached.

Furthermore, at the new trial of *Bell vs. Staacke*, ordered by the Supreme Court as aforesaid, to wit, the trial had before Judge Taggart in April and May, 1904, the complainant's grantors, James L. Crittenden and Catherine M. Bell, the grantees of the plaintiff John S. Bell and grantors of appellant, the U. S. Oil & Land Co., appeared and submitted to the jurisdiction of that Court and fully contested the case on all the issues upon which a new trial had been ordered. They appealed to the said Supreme Court after the decision against them from the Order denying them a new trial, and upon that appeal raised in the said Supreme Court as aforesaid the question of the jurisdiction of the Supreme Court to order a new trial after an appeal from the judgment therein had been dismissed. The said Supreme Court, as aforesaid, decided against the proposition of those appellants and their grantee, the complainant in this action is concluded by the said ruling of the Supreme Court of California. We submit that there never was a clearer case for the application of the rule of *res adjudicata*.

Final judgment in a state Court concludes the parties when suit is brought on same cause of action in United States Court.

Duncan vs. Gegan, 101 U. S. 810.

The judgment of state Court is conclusive in the federal Courts to same extent as recognized in the state Courts.

Covington vs. First Nat. Bank, 198 U. S. 100;
Forsyth vs. Hammond, 166 U. S. 205;
Fauvergin vs. New Orleans, 18 How. 470.

“What effect a judgment of a state Court shall have as *res adjudicata* is a question of state or local law.”

Union Bank vs. Memphis, 189 U. S. 71.

This is so though the U. S. Court would have decided differently but for the state Court decision.

Nicols vs. Levy, 5 Wall. 433.

II.

The next contention of the appellant is that both legal and equitable titles to the 10,000 acre tract and the 4,000 acre tract were, at the time of the decree and Order of Sale, in *Bell vs. Staacke* and from a date prior to the commencement of that suit, had been, the one, in Campbell and Kent, trustees, and the other in San Francisco Savings Union as purchasers for value and without notice of the trusts in *Staacke*, and that neither the trustees nor the Savings Union were parties to the action of *Bell vs. Staacke*. Or, in other words, that the legal title to said lands were in the trustees and the beneficial interest in the San Francisco Savings Union. If this was so, then neither the complainant nor its grantors ever had any cause of action against Thomas Bell, his assigns or successors.

This question, however, has been settled by repeated decisions of the Supreme Court of the State of California against the contention of appellant. The practice of securing the payment of money loaned upon real estate by deeds of trust has been

so long in vogue in the State of California, and the rights and estates of the parties to such transactions and to such deeds so clearly and so often defined, that it would seem useless for the appellant to take the position stated as aforesaid. The leading case in California on this question is the case of *Koch vs. Briggs*, 14 Cal. 262, where the difference between a mortgage given as security for a debt and a deed of trust given for the same purpose is pointed out, and that difference was that, in a mortgage, on default of the mortgagor, the equity of the mortgagor remaining must be foreclosed by proceedings in Court, while, in the case of a deed of trust, on default of the grantor, the grantor's equity in the premises is closed by a sale of the property by the trustees in the manner provided in the deed of trust.

The decision in *Koch vs. Briggs* was written by Justice Stephen J. Field, who afterwards served upon the bench of the Supreme Court of the United States with distinguished ability. While Justice Field was one of the Justices of the United States Supreme Court, to wit, in 1894, he wrote the opinion in the case of *Bell Mining Co. vs. Butte Bank*, 156 U. S. 470-478, wherein he quoted from the opinion written by him in *Koch vs. Briggs*, 14 Cal. supra. He quotes therein also from the opinion by him in *Foggarty vs. Sawyer*, 17 Cal. 589. The material part of the opinion in *Koch vs. Briggs*, quoted by the learned Justice, is as follows:

“The foreclosure (meaning the mortgagor's or grantor's equity remaining in the mortgage or deed of trust) might be by judicial foreclosure or by any other regular proceeding which resulted in extinguishing the mortgagor's right of property by sale.”

And the material part quoted from *Foggarty vs. Sawyer*, supra, is as follows:

“While a mortgage, under the provisions of section 260, Practice Act of the State of California, is only a lien, it does not prevent the mortgagor from making an independent contract for the possession, or from authorizing a sale of the premises, and that there are no legal obstacles to making such a contract with the mortgagee or clothing him with power of sale. The right to dispose both of the possession and estate follows necessarily from the ownership of the property, and this being so, no valid objection can be urged against incorporating the contract and power in the same instrument with the mortgage. They do not become in that way any part of the mortgage, but are as much independent of it as though contained in separate instruments.”

The learned Justice then proceeds:

“We agree with what is stated by the Court in that case * * * * The power of sale in the indenture, whether we call it a deed of trust or a mortgage, does not change its character as an instrument for the security of the indebtedness designated, but it is an additional authority to the grantee or mortgagee; and if he does not choose to foreclose the mortgage by any of the ordinary methods provided by law, he can proceed under the power added for the sale of property to obtain payment of the indebtedness. The insertion of a power of sale does not affect the mortgagor’s right to redeem so long as the power remains unexecuted and the mortgage is not, as it may be, foreclosed in the ordinary manner; but, when a sale is made, the interest of the mortgagor is wholly divested, embracing his equity of redemption.”

In short, the learned Justice likened a deed of trust to a mortgage with power of sale and held that, until a sale of the property was had, either under foreclosure or under the power in the grant from the mortgagor, the mortgagor's or grantor's right of redemption remained.

It has been held by the Supreme Court of the State of California in the following cases that, where the owner of real property borrows money upon the security thereof, and conveys the property by deed of trust to a third party as security for the payment of the money borrowed, an interest remains in the grantor in the realty which is subject to attachment by his creditors, and to conveyance or further encumbrance by him, subject, of course, to the deed of trust.

Kennedy vs. Noonan, 52 Cal. 326;
Fish vs. Fowlie, 58 Cal. 374;
Halsey vs. Martin, 22 Cal. 645;
Brown vs. Campbell, 100 Cal. 639-647, 35 Pac.
 433, and 38 Am. St. Rep. 314;
King vs. Gotz, 70 Cal. 240.

III.

The next contention by the appellant is that "the decree on the new trial in *Bell vs. Staacke* is null and void inasmuch as the Court had jurisdiction of neither the legal nor equitable titles to the lands or of the land itself, which were the subject of the suit." We do not think that such statement demands any serious consideration. That John S. Bell, Thomas Bell's debtor, owned an interest in the 10,000 acres, the legal title to which stood in the name of Staacke as security for the said indebtedness, is clear. By the conveyance of the land by John S. Bell to his wife, and by them to Crittenden, and by Crittenden to U. S. Oil & Land Company,

complainant herein, the complainant acquired that interest, subject, of course, to the claim of Thomas Bell upon the said land as security, with the right to have the lands, on default of the debtor, sold through foreclosure proceedings through a Court of competent jurisdiction, and subject, of course, to the right acquired by the Savings Union when Staacke, with the consent of John S. Bell, conveyed the said land to the trustees of the Savings Union as security for the payment of the \$60,000 borrowed from the Savings Union.

The said judgment in *Bell vs. Staacke* disposed of all interest of the plaintiff John S. Bell and his said grantees in the land in controversy, except the right of redemption, and that was finally closed out by the commissioner's sale and deed.

John S. Bell and his grantees had the right to redeem the said lands from the claim of Thomas Bell thereon as security and the right to redeem after judgment of foreclosure of the lien of Thomas Bell in *Bell vs. Staacke*, until the sale thereunder and for twelve months thereafter, as shown in our statement aforesaid. If such redemption had been made, then John S. Bell, or any of his grantees making such redemption, would have been entitled to redeem the said land from the claim of the San Francisco Savings Union; *that is, the right to pay the debt due the San Francisco Savings Union after it became due and to demand and receive a re-conveyance of the land from the trustee in accordance with the provisions of the deed of trust. When the lien, in favor of the Estate of Thomas Bell, upon the said lands, to wit, in favor of Teresa Bell as administratrix of the said estate, as asserted in her cross-complaint in the suit of Bell vs. Staacke, was foreclosed and the land sold under the decree and Order of Sale in Bell vs. Staacke, no redemption thereafter having been made, the execution and de-*

livery of the deed of conveyance to the purchaser at the commissioner's sale therein, to wit, to Teresa Bell as administratrix of the Estate of Thomas Bell, *vested all the right and interest of John S. Bell and of his grantees, and of Staacke*, in Teresa Bell as administratrix of the Estate of Thomas Bell. She thereby became the "*assigns*" of Staacke of all the right, claim, interest and estate, in the said lands, of John S. Bell and of Staacke, subject, however, to the said deed of trust, and as the owner and holder of such rights, interest and estate in the said lands, the said administratrix was entitled to redeem the land from the claims of the San Francisco Savings Union before any sale under the deed of trust was made by the trustees, and she did so redeem by paying, under the Order of the Probate Court, the judgment of the San Francisco Savings Union.

IV.

Appellant in its point 3, p. 33 of its brief, contends that "the decrees in *Bell vs. San Francisco Savings Union* is a conclusive termination of the rights of all parties in *Bell vs. Staacke*, and of the status of the San Francisco Savings Union and its trustees as purchasers for value without notice of the land in controversy."

We have shown hereinabove, in correcting erroneous statements by the complainant, that the Court, in *Bell vs. the San Francisco Savings Union* never found or adjudged that the San Francisco Savings Union, or its trustees were purchasers of the land in controversy for value and without notice. The deed of trust conveyed to the trustees nothing but the naked legal title. They had no right of possession or control over the property in any manner. The San Francisco Savings Union acquired by the said deed of trust security only for the payment of

the debt on the default of the debtor, and the right to avail itself of the said security by having its trustees sell the land on its demand after default of the debtor. Neither the Savings Union nor its trustees, nor both of them, acquired by the deed of trust the whole estate in the said land.

While the Court, in its findings and decision in *Bell vs. San Francisco Savings Union* did not therein finally dispose of the conflicting claims of John S. Bell and his grantees, and of the administratrix of the Estate of Thomas Bell, deceased, upon the land in controversy, yet it did, by its findings, establish the fact that the title to the 10,000 acre tract was held by Staacke in trust, as security for the payment of the indebtedness due by John S. Bell to Thomas Bell.

See finding 25 in *Bell vs. the San Francisco Savings Union*, set forth in the bill of complaint, pp. 54-56 of Record.

Inasmuch as the same issue on which said finding 25 was based was pending between John S. Bell and his grantees on the one part and Staacke and the administratrix of Bell on the other part, in the prior action of *Bell vs. Staacke*, the pendency of which was pleaded in the answer, in *Bell vs. Staacke*, of the said administratrix and found as a fact in *Bell vs. San Francisco Savings Union*, the Court in *Bell vs. San Francisco Savings Union* relegated said parties for the final determination to the determination of the Court in that action. John S. Bell and his grantees being parties to the action of *Bell vs. San Francisco Savings Union*, they are bound and concluded by this disposition in *Bell vs. the San Francisco Savings Union* of the issues involved in *Bell vs. Staacke*.

The appellant proceeds under said Point 3 (a) on page 33 of its brief and say that:

“The only way in which Teresa Bell as administratrix of the Estate of Thomas Bell could have availed herself of any rights under the decree in *Bell vs. Staacke*, would have been to plead it in abatement in *Bell vs. San Francisco Savings Union* until the former decree became final.”

We have shown that the pendency of *Bell vs. Staacke* was pleaded in the amended and supplemental answer of Teresa Bell as administratrix, filed in March, 1902, and again in her amendment to her answer filed at the beginning of the trial of *Bell vs. San Francisco Savings Union*, June 13th, 1904. We repeat here the material part of the latter amendment to the answer of the defendant, the administratrix of the Estate of Thomas Bell:

“She states that the parcel of real property described in paragraph I of plaintiff’s complaint herein (meaning the 10,000 acre tract) is the subject matter of litigation in an action now pending in this Court entitled *John S. Bell vs. George Staacke et al.*, No. 2826, upon the same claims of all the parties to this action, except the defendants San Francisco Savings Union, Henry C. Campbell, Thaddeus B. Kent, E. B. Pond and Mercantile Trust Company. Said action No. 2826 was commenced before this action and was pending when this action was commenced. The said action No. 2826 has been heretofore, to wit, April 19th to May 5th, 1904, tried and submitted to this Court for its decision, but the issues in said action No. 2826 involve the trusts upon which the defendant George Staacke holds the said parcel of land (meaning the 10,000 acre tract) that the plaintiffs herein, Kate M. Bell and James L. Crittenden, claim only herein as the grantees of the plaintiff John S. Bell in said former action,

and an Order of Court has heretofore been made in said former action permitting the said Kate M. Bell and James L. Crittenden to prosecute the said former action in the name of said plaintiff John S. Bell. Wherefore this defendant asks that this action, as between the plaintiffs and herself, insofar as it concerns the trusts upon which the defendant George Staacke holds the land described in paragraph I of the complaint herein abate or be continued until the final determination of said action No. 2826."

It appears now that the Court in *Bell vs. the San Francisco Savings Union*, when it came to make its findings and decision, did practically grant the request of the said administratrix made in the amendment to her answer just quoted.

See finding 40 in *Bell vs. San Francisco Savings Union*, as alleged in bill of complaint, p. 71 of Record.

And we repeat that the complainant and appellant here, U. S. Oil & Land Company, as the grantee of James L. Crittenden and of John S. Bell through Crittenden, is bound and concluded by the Court's decision in *Bell vs. San Francisco Savings Union*, aforesaid, to the effect that the claims of John S. Bell and his grantees on the one part, and the claims of the Estate of Thomas Bell and of the administratrix of his estate on the other part, were relegated to such disposition as the Court in *Bell vs. Staacke* should make.

The appellant proceeds further in its Points and Authorities, as follows:

"Nothing, however, prevented the parties from waiving their right to plead the decree in the suit pending of *Bell vs. Staacke* in abatement of *Bell vs. San Francisco Savings Union*."

We call attention again, as confirmatory of our statement that the pendency of *Bell vs. Staacke* was pleaded in *Bell vs. San Francisco Savings Union* by the defendant Teresa Bell as administratrix in her answer and amendment to her answer, to the statement in the decision of the Supreme Court in *Bell vs. San Francisco Savings Union*, 153 Cal. at page 74, to wit:

“It is found, however, that the action of *Bell vs. Staacke*, the pendency of which was set up in the pleadings, was still pending at the time of the decision, and that the question of the relations between John S. Bell and his grantees on the one hand, and of Staacke and the Estate of Thomas Bell on the other, in respect of the indebtedness of John S. Bell to Thomas Bell and of the 10,000 acre tract, are involved in said action and are in course of judicial determination and settlement therein. The judgment, accordingly, made no adjudication of the rights of John S. Bell and Thomas Bell, or their successors as between each other, leaving the question of those rights to be determined in *Bell vs. Staacke*.”

Now, it would seem to be impossible to make anything clearer than the fact, aforesaid, that the parties in *Bell vs. Staacke*, and their respective interests in the land in controversy, insofar as those parties were also parties in *Bell vs. San Francisco Savings Union* and their interest in the land in controversy there involved, were, by the final disposition of the case of *Bell vs. San Francisco Savings Union*, relegated for final disposition to the Court in the case of *Bell vs. Staacke*.

V.

The bill of complaint does not state a cause for equitable relief, and we submit that the decree dismissing the bill can be affirmed on that ground.

That point was raised in the Lower Court by the defendants by general demurrers to the bill. (Record pp. 101-132, 163). It is shown by the allegations of the bill that the complainant had an adequate, practical and easy remedy at law. It could have gone into the Superior Court of Santa Barbara County in the case of *Bell vs. Staacke*, as the grantee of the plaintiff John S. Bell and by motion compelled the clerk of said Court, C. L. Hunt, to deliver the deed alleged to be held by him from Staacke, for the benefit of John S. Bell and his grantees. It could have moved the said Court in *Bell vs. San Francisco Savings Union* (being a party thereto) to set aside the satisfaction of the judgment alleged and for Order directing the defendant Mercantile Trust Company to proceed to execute the Order of Sale, which it alleges it was entitled to.

“Equity will not entertain jurisdiction where there is an adequate remedy at law.”

Knox vs. Smith, 4 How. (U. S.) 298;

Russell vs. Clark, 7 Cranch 67;

Whitehead vs. Shattuck, 138 U. S. 147;

Buzzard vs. Hauston, 119 U. S. 347;

Moulton vs. Knapp, 85 Cal. 355 at 388-9;

Ketchum vs. Crippin, 37 Cal. 223.

This Court will take judicial notice that the Superior Courts of California are Courts of general jurisdiction.

Furthermore, we submit that the complainant is not entitled to any equitable relief because it does not offer to do equity, to wit: it claims under the findings and judgment in *Bell vs. San*

Francisco Savings Union, which affirms that Staacke held the title to the 10,000 acres in trust as security for the payment of the indebtedness of John S. Bell (its grantor) to Thomas Bell, and does not offer to pay the said indebtedness or any portion thereof, but in other parts of the bill denies such trust and security.

Finally we submit that there has been nothing in the conduct of John S. Bell or of his grantees that a Court of Equity would commend, but much that a Court of Equity would and has condemned. He accepted the credit of the \$60,000 borrowed of the Savings Union, consented to the deed of trust, apparently because the lands had depreciated to such an extent that the uncle's land had to be included to make up the security. As soon as his uncle and benefactor was dead, he tried to foist a false claim upon his estate.

Then, in December, 1896, when the \$60,000 note to the Savings Union was about to become barred by the Statute of Limitation and sale of his land was pending, he entered into a solemn written agreement with the Savings Union to extend the time of payment on said note to December, 1898, and agreed that the said deed of trust was a first lien on his land. He then immediately conveyed the land to his wife, and a little later he and his wife conveyed an undivided one-half thereof to Crittenden. Then, with easy conscience, and Crittenden as his attorney, he filed a verified amended complaint in the pending suit against his benefactor's estate, denying all indebtedness thereto and alleging that Staacke held the title to the 10,000 acres in trust solely for him, to take the place of the complaint in which he had sworn that Staacke held the said land as security for all that his uncle had advanced to

him and to be advanced, and then, still piloted by his grantee attorney, brought suit against the Savings Union to overthrow the deed of trust.

Defeated in both these cases, he and his wife have ceased to litigate further.

Not so, however, with his grantee, Crittenden. He assigned to an alleged Arizona corporation and, seven years after the state Court adjudged that said corporation take nothing, it appears as complainant in the Lower Court in this action, with Crittenden as its solicitor, alleging as the basis of its complaint that the land which, in 1892, was not considered good security for \$60,000, has increased in value.

We respectfully submit that the decree should be affirmed.

T. Z. BLAKEMAN,
Solicitor for Appellees Teresa Bell
as Administratrix et al.

PETER J. CROSBY,
Solicitor for Appellees Eustace Bell et al.

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

U. S. Oil & Land Company, a corporation,

Appellant,

vs.

Teresa Bell, as Administratrix of
the Estate of Thomas Bell, deceased,
with the will annexed,
et al.,

Appellees.

Brief of Union Oil Company of California, One of
Appellees.

Filed

OCT 6 - 1914

LEWIS W. ANDREWS, F. D. Monckton

THOS. O. TOLAND,

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Solicitors for Appellee, Union Oil Company of California.

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Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the will annexed, et al.,

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Brief of Union Oil Company of California, One of Appellees.

STATEMENT OF CASE.

U. S. Oil & Land Company filed its bill in equity against Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, and a large number of other persons and corporations. It invokes the jurisdiction of the federal court solely because of the diverse citizenship of the parties. Said bill in equity is in the nature of a suit to quiet title and compel Teresa Bell as administratrix to convey to appellant the undivided one-half of the ten thousand (10,000) acre tract.

The defendants filed various answers, setting up the entire record in certain cases begun and prosecuted to final decree and judgment by John S. Bell v. George Staacke, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, and others, and showing that all matters and things involved in this controversy had been fully adjudicated in the courts of California and established in the Supreme Court thereof adversely to the claims of appellant, and that these adjudications remain in full force and are a bar to any right of action on the part of appellant.

The question thus raised by the answers was squarely one of *res adjudicata*, and the court determined to hear that issue before proceeding further with the case.

It was thereupon stipulated in open court that the allegations concerning the several actions, judgments and decrees set forth and pleaded in the answers so filed, substantially stated the true facts and situation with regard to said judgments, and should be and were treated as the evidence of said judgments and decrees and orders of court, but without any admission on the part of appellant of the jurisdiction of the several courts or the validity of the judgments and decrees.

Thereupon the District Court heard the case upon the question of *res adjudicata* and the effect of these judgments and decrees upon the right of appellant under its bill in equity, and found and decided that said judgments and decrees were final and binding and that the bill in equity should be dismissed, which was done.

STATEMENT OF FACTS.

John S. Bell was the nephew of Thomas Bell, and at one time owned 10,000 acres of land in Santa Barbara county, which he had received from Thomas Bell. Thomas also owned 4,000 acres. Under a written contract between them, Thomas Bell was advancing and loaning money from time to time to John S. Bell, and all of this property was finally sold to a third party by John S. Bell and Thomas Bell, and certain notes and a mortgage taken to Thomas Bell for the deferred purchase money,—the cash payment being applied on the indebtedness from John S. to Thomas.

Thomas continued under written contract to hold the notes and mortgage to secure money advanced, or which he might thereafter advance, to John S. The whole purchase price was about \$350,000, and 4,000 acres of the land belonged to Thomas, at all times, and as to that part, John S. was not interested.

Later the purchaser failed to pay interest and Thomas began foreclosure. The purchaser thereupon proposed to convey back the land and have his notes and mortgage cancelled. By agreement between John S. and Thomas, this was done, but the conveyance was made to George Staacke, a confidential clerk of Thomas Bell, and it was agreed that the title should be held in trust by Staacke to secure moneys owing or which should be thereafter advanced by Thomas to John S.

Thomas died and John S. shortly thereafter began an action against George Staacke to have a trust declared in this land in favor of John S. and to compel Staacke to convey the land to him. The estate of Thomas Bell was made a party.

This was case No. 2826, in the Superior Court of Santa Barbara county. The case was tried and the court found that Staacke was trustee of the land for John S. Bell, and that John S. Bell owed the estate of Thomas Bell something over \$52,000 as a balance due up to October 16th, 1892, the date of the death of Thomas. The court, however, found that Staacke did not hold the title to the 10,000 acres in trust as security for this indebtedness.

The findings and conclusions were filed March 6th, 1901, and notice of intention to move for a new trial was duly given in March, 1901. About June 7th, 1901, the court of his own motion filed two additional findings in favor of Teresa Bell, administratrix, which additional findings had nothing whatever to do with the decree in favor of the plaintiff, and neither party made any objection to or appeal from such additional findings.

The estate of Thomas Bell appealed to the Supreme Court from the judgment and decree, and also from the refusal to grant a new trial. The appeal from the judgment and decree was taken one day before the entry of judgment, and was therefore dismissed on motion. The appeal from the overruling of the motion for new trial resulted in the reversal of the court below and the granting of a new trial. This is reported in 137 Cal. 307. A rehearing was granted in the Supreme Court on the question of the new trial, and the court in bank again held that the motion for new trial should be granted, and remanded the case for new trial. The facts are again fully discussed in the opinion, 141 Cal. 186.

In that case, John S. Bell expressly made the point that the notice of intention to move for new trial was premature and that any action of the court upon such motion was therefore without jurisdiction and void. The Supreme Court on full hearing refused to allow this claim, but on the contrary granted a new trial, and thereby vacated the judgment theretofore rendered.

On the new trial the issues were found in favor of the estate of Thomas Bell, and the property was ordered sold to satisfy the \$52,000 debt and interest. This case was again appealed to the Supreme Court by John S. Bell, and the judgment and decree of the Superior Court was fully affirmed.

While this case was pending, Kate M. Bell and James L. Crittenden, grantees of John S. Bell, began another action in the Superior Court of the city and county of San Francisco, asking to have their title quieted against the claims of San Francisco Savings Union, under a trust deed made by George Staacke to certain trustees, to secure a \$60,000 indebtedness. A decree was rendered on cross-petition in favor of the trustees for the San Francisco Savings Union.

The decree directed the Mercantile Trust Company, which had become the trustee for the Savings Union, to sell the property and first pay the debt of \$60,000 and interest out of the proceeds.

It was expressly found in that decree that in the case of Bell v. Staacke, which was then pending, all questions of the relations between John S. Bell and his grantees, on one hand, with Staacke and the estate of Thomas Bell on the other, "are in course of judicial determination and settlement therein." The judgment

in the Savings Union case, therefore, made no adjudication of the rights of John S. Bell and Thomas Bell (or their successors) as between each other, "leaving the question of those rights to be determined by Bell v. Staacke."

The full discussion of this matter is found in 153 Cal. 64, 74.

The Supreme Court having affirmed the final judgment and decree in John S. Bell v. Staacke *et al.*, case No. 2826, the commissioner duly sold the 10,000 acres, and Teresa Bell became the purchaser thereof and the one year for redemption having expired, she duly received her deed from the commissioner.

After receiving her deed from the commissioner, Teresa Bell paid to the trustee for the San Francisco Savings Union the amount due it under the judgment already referred to. She was a party entitled to redeem, and such payment would surely give her the right to a release and reconveyance from the trustee.

Under the foregoing facts which appear in the pleadings in this case, the District Court had no difficulty in finding that the appellant is concluded by the judgments, orders and sale in the courts of California, and that it has no right or interest in the property, and that its bill in equity should be dismissed.

Conclusiveness of Judgment of State Courts Upon Local Laws and Procedure.

"It may be said generally that whenever the decisions of the state courts relate to some law of a local character which may have become established by those courts or has always been a part

of the law of the state, that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the federal courts."

4 Enc. of United States Supreme Courts Reports, 1058, citing

Detroit v. Osborne, 135 U. S. 482;

Bucher v. Chesire R. Co., 125 U. S. 555, and other cases.

"The decision of the highest court of the state that a cause of action arose, 'within the state,' within the meaning of the statute, providing that an action against a foreign corporation might be maintained by another foreign corporation or by a non-resident, where the cause of action arose within the state, is binding upon the federal court."

Anglo-American Prov. Co. v. Davis Prov. Co.,
191 U. S. 373.

See also

Northern C. R. Co. v. Maryland, 187 U. S. 258-
267.

In construing the statutes of a state, and determining their affect and validity, the federal courts will follow the decisions of the highest tribunal of the state upon the same subject. See authorities above cited, and also

Stoll v. Pacific Coast S. S. Co., 205 Fed. 169.

Res Adjudicata.

Certain judgments of Superior Courts of the state of California and of the Supreme Court of the state of California, upon the precise claims and controversy here presented, in litigations directly between the same

parties, or those in privity with them, were pleaded at bar, and this case in the court below was heard upon the answers thus pleading these judgments and upon stipulation made in open court that the facts relating to the judgments as set forth in the several answers were substantially correct,—but not admitting the jurisdiction of the several courts or the validity of the judgments.

The court below found and decided that the judgments in question fully disposed of all matters involved in this case and that they are binding upon the parties and upon the federal court.

It will be observed *that this case presents no federal question* and was brought in the federal court solely under favor of the law giving the federal court concurrent jurisdiction with the state court in cases of diverse citizenship.

The Supreme Court of California having four times held against the contentions of the appellants or those under whom they claim, and the District Court having followed the Supreme Court of California, and having recognized the finality of its judgments,—the appellants now ask this court to review and reverse the judgments of the Supreme Court of California and especially direct their claim to a proposition of the construction and effect of local statutes of California, and rules of procedure governing motions for new trial and appeal under those statutes.

It is elementary law, recognized by all authorities, that a judgment in a state court which has been affirmed in the Supreme Court of a state, cannot be re-

viewed for error or irregularity in the District Court of the United States.

Such a judgment is necessarily *res adjudicata* upon the parties and their privies, and they have exhausted their remedy when they have presented to the Supreme Court of the state their claims with regard to any irregularity or lack of jurisdiction on the part of the trial court.

In *Forsyth v. Hammond*, 166 U. S. 506, in a proceeding by the city of Hammond to bring within its corporate limits the lands of Forsyth, a decree of the Circuit Court was rendered annexing such lands to the city. Forsyth insisted that such decree was not only erroneous but void, and voluntarily commenced an action in the State Supreme Court (in error) to have such claim established. It was held that the decision of the State Supreme Court was conclusive as to the matters decided. In a subsequent proceeding in the federal court between the same parties, in passing upon this question, the court said:

“If action by the state tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process and compelled to there litigate the question. But after an adverse decree, she insisted that it was not only erroneous but void and voluntarily commenced an action in the Supreme Court of the state, to have that claim established. She invoked the jurisdiction of that court. She summoned the city of Hammond into that forum, and there challenged the decree of the Circuit Court; challenged it for error and also for lack of jurisdiction. The ques-

tions both of error and of jurisdiction were certainly judicial in their nature and questions within the undoubted cognizance of the Supreme Court. She voluntarily sought its judgment. Can she after its decision be heard in any other tribunal to collaterally deny the validity thereof? Does not the principal of *res judicata* apply in all its force? Having litigated the question in one competent tribunal and having been defeated can she litigate the same question in another tribunal, acting independently and having no appellate jurisdiction?"

That case is in principal precisely the same as the case at bar.

John S. Bell and those claiming under him fully litigated out all his claims upon the merits of the controversy in the Superior Court of Santa Barbara county, California, and in the Supreme Court of that state. They presented to the Supreme Court of California the precise question of jurisdiction and the precise claim that the second judgment and decree of the Superior Court of Santa Barbara county was void,—which is at the foundation of this suit in the federal court.

They invoked the jurisdiction of the Supreme Court of California upon that question, and had their day in court in the highest tribunal provided by the Constitution and laws of this state. Having been defeated in the claim that the action of the Supreme Court and of the Superior Court of Santa Barbara county,—in granting a new trial and in the final judgment resulting therefrom,—were void and without jurisdiction, they now seek to relitigate the same question in the

District Court of the United States. We submit that this cannot be done and that not only will the federal court follow the construction which the Supreme Court of California has given to the rules of procedure and code provisions governing new trials and appeal in California, but further than this, that the judgments so rendered and affirmed in the state courts are beyond the power of the Federal District Court to review and are *res adjudicata* upon the parties.

In Scotland County v. Hill, 132 U. S. 107, 114, the court said:

“If there has been an adjudication in a state court which is binding upon plaintiff, that adjudication, whether right or wrong, concludes him until it has been reversed or otherwise set aside in some direct proceeding for that purpose. It cannot be disregarded any more in courts of the United States than it can in the state courts.”

See also

Central Trust Co. v. Seasongood, 130 U. S. 482,
492;

Mitchell v. First National Bank, 180 U. S. 471.

In Nichols v. Levy, 5th Wall. 433, the state court had given construction and interpretation to a statute of its own state, and the case was taken to the Supreme Court of the United States. That court held that it was bound by the construction of the statute given by the Supreme Court of the state, although if the question had been open and treated on general principles of jurisprudence, and independently of the state decision on its own statute, the judgment would necessarily have been the other way.

Answer to Points and Authorities In Brief for Appellant.

ANSWER TO POINT I:

This precise question was decided against appellants and became *res adjudicata* in Bell v. Staacke, 141 Cal. 186. At page 189 the court says:

“There is nothing in this point. The findings and conclusion of law were filed March 6th, 1901, in due time, and on March 19th, 1901, defendants gave their notice of intention to move for a new trial. Some two months afterwards, the judge of the lower court on his own motion, reciting that such findings had been inadvertently omitted, made and filed two additional findings upon two issues raised by plaintiff’s answer to defendant’s cross-complaint. * * * They were in no way connected with the findings upon which the decree in favor of plaintiff was founded, and neither party attacks them, nor has either party appealed from or questioned this part of the decree.”

The whole case is then discussed on its merits and the order denying the motion for new trial was reversed and the cause remanded.

Upon retrial final judgment was rendered in favor of the estate of Thomas Bell and was again appealed by John S. Bell to the Supreme Court of California, and the judgment in favor of the estate of Thomas Bell was affirmed in 151 Cal. 544.

In that case, at page 547 the court says:

“A claim that the Superior Court had no jurisdiction to retry this case, notwithstanding that it was remanded by this court for a new trial, is

based on the fact that the appeal from the former judgment in favor of the plaintiff was dismissed. This, it is said, constituted an affirmance of the judgment preventing the subsequent giving of any other judgment. But a judgment, even although expressly affirmed on appeal, is vacated by an order granting a new trial. See *Swett v. Grey*, 141 Cal. 83, 88."

That judgment so affirmed by the Supreme Court remains in full force, and is a complete bar to this action.

When the case was first before the Supreme Court in *Bell v. Staacke*, 137 Cal. 305, the court in its opinion on page 308, said:

"The premature service of a notice of intention to move for a new trial, or a *failure* to serve such notice at all, might be a good reason for *denying the motion*, but does not deprive this court of *jurisdiction to hear the appeal*, nor does it constitute a reason for its dismissal upon the ground that the court *has not jurisdiction to hear it*. Matters occurring prior to the order appealed from, cannot be considered on the motion to dismiss the appeal. (*Heinlen v. Heilbron*, 94 Cal. 636; *Knowlton v. McKenzie*, 110 Cal. 190; * * * *Sutter Co. v. Tisdale*, 128 Cal. 180.)"

Thus the highest court of California holds that the date of giving notice of intention to move for new trial is *not jurisdictional*. That holding binds the federal courts.

ANSWER TO POINT 2:

There is no merit in this proposition. John S. Bell himself began the case against Staacke and the estate of Thomas Bell, known as case No. 2826, for the purpose of establishing his rights and claims not only as against Staacke as trustee, but as against the estate of Thomas Bell. He did not bring into the controversy the San Francisco Savings Union or the trustees holding the deed of trust (in the nature of a mortgage security), and they were therefore not concluded by the judgment and decree, nor was any attempt made to prejudice their rights.

Nevertheless, a final judgment and decree having resulted in the case thus begun by John S. Bell himself, that judgment is *res judicata* as against him and those claiming under him, and the fact that he did not make somebody else a party in nowise deprived the judgment of its finality or binding effect as against him.

In *Bell v. San Francisco Savings Union et al.*, 153 Cal. 64, Kate M. Bell and James L. Crittenden were appellants and had, in the trial court, undertaken to defeat the claims and security held by the San Francisco Savings Union. The Supreme Court in reviewing that case, on page 74 says:

"It is found, however, that the action of *Bell v. Staacke*, the pendency of which was set up in the pleadings, was still pending at the time of the decision, and that the question of the relations between John S. Bell and his grantees, on the one hand, with Staacke and the estate of Thomas Bell on the other, in respect to the indebtedness of John S. to Thomas Bell, and of the 10,000 acre tract,

are involved in said action, and 'are in course of judicial determination and settlement therein.' The judgment accordingly made no adjudication of the rights of John S. Bell, and Thomas Bell (or their successors), as between each other, leaving the question of those rights to be determined in *Bell v. Staacke*."

ANSWER TO POINT 3:

The quotation from the opinion in *Bell v. San Francisco Savings Union*, 153 Cal. 64 (see 74), conclusively answers Point 3 and shows that there was an express reservation of all questions concerning the mutual rights and relations between John S. Bell and Thomas Bell, or their successors, "as between each other, leaving the question of those rights to be determined in *Bell v. Staacke*."

It shows that there had been no final decree or judgment in *Bell v. Staacke* at the time of the decision in *Bell v. San Francisco Savings Union*, and that the pendency and scope of *Bell v. Staacke* was fully pleaded and recognized in the latter case.

ANSWER TO POINT 4:

Manifestly there is nothing in Point 4. The title to the property in question, subject to the rights of the trustees for San Francisco Savings Union, was in George Staacke. He had conveyed the same as security to trustees for the San Francisco Savings Union and they came into the case of *Bell v. San Francisco Savings Union et al.*, by cross-petition, and set up their rights and the decree was rendered on their cross-petition, ordering the sale of the property, unless the

amount of the indebtedness with interest should be paid.

In the meantime in the older case of John S. Bell v. Staacke *et al.*, Staacke had been decreed and adjudged to hold the title to the property, so far as he was concerned, in trust first, to secure indebtedness from John S. Bell to the estate of Thomas Bell, and second, for the benefit of John S. Bell as to any balance. An order of sale had been issued in that case and the property had been in fact sold, before any attempt was made to sell under the decree in the San Francisco Savings Union case.

Teresa Bell, widow of Thomas Bell, had purchased the property at commissioner's sale and received a deed for the same fully transferring to her all of the rights of John S. Bell and the estate of Thomas Bell, and George Staacke.

Thereupon, clothed as she was with the title and equity in the property, Teresa Bell paid and satisfied the judgment and decree in favor of the San Francisco Savings Union and redeemed the land therefrom.

In any event neither John S. Bell nor his grantees could possibly hold any estate, legal or equitable, in this property by reason of the foregoing facts.

ANSWER TO POINT 5:

There is no merit in Point 5. The Supreme Court of California fully decided the proposition and it is *res adjudicata* in case No. 2826. All of the points and authorities submitted in answer to Point 1 apply also to Point 5.

It will be especially noted that every argument and case relied upon under Point 5, relates to the construction of the provisions of the laws and statutes of California, and that since the Supreme Court has passed upon this precise question at least three times as between these same parties or their privies, the federal court is not only bound under the principles of *res adjudicata*, but would follow this construction of California statutes upon ordinary principles already discussed.

ANSWER TO POINT 6:

There is no merit in Point 6. What has been said in answer to Points 2 and 3 is controlling as to Point 6.

It asks this court to review and reverse the Supreme Court of California and attacks the decision of that court in *Bell v. Staacke*, 141 Cal. 186, 195 *et seq.*

In any case it is impossible to see how John S. Bell or his grantees obtained any right or title in the property by virtue of the attempted logic of Point 6. The argument would be:

“Teresa Bell, by the technical effect of the trust deed securing the San Francisco Savings Union, did not get a title under her purchase in the case of *John S. Bell v. Staacke et al.*; therefore, the grantees of John S. Bell (who at least was concluded by that decree), must have title as against Teresa Bell and those holding under her.”

Why? There is no connection whatever between the argument and any claim of title on the part of the appellant.

ANSWER TO POINT 7:

Point 7 has no application whatever in the chain of title of the appellant, and the appellant is conclusively estopped by the adjudication in the case of John S. Bell v. Staacke *et al.* We have already quoted from the opinion of the Supreme Court in case No. 4424, and shown that the rights of John S. Bell and the estate of Thomas Bell (and their grantees) were expressly left to be determined in the pending action No. 2826.

ANSWER TO POINT 8:

There is no merit in this point. It has no connection whatever with the claim of title on the part of the appellant. It does not relieve appellant from the binding force of the judgment and decree in action No. 2826.

In any event the San Francisco Savings Union and its trustees have had their money and if they have not properly reconveyed to Teresa Bell, they are in equity bound to do so.

On page 75 of the brief for appellant, "fatal error" is claimed in regard to confirmation of sale.

If this were true, the District Court was not the place to review such error, and in any case that would not enlarge the title or equity of John S. Bell or of appellant, as his grantee. It is not profitable to chase a rainbow of that sort.

Stipulation as to Facts.

Complaint is made that the stipulation referred to in the findings and judgment of the District Court was not correct and should have been modified by the court.

This related to the evidence of the several judgments and decrees pleaded in the answers and agreed in open court to substantially set forth the true situation with regard to the state of the court records. Whatever the stipulation was, it was made in open court and three attorneys filed affidavits supporting the proposition that the stipulation is correctly stated in the order and decree. Two attorneys filed affidavits denying the correctness of the stipulation. The district judge was present and personally knew the facts. His action with regard to the same is therefore conclusive upon the subject,—supported as it is by his own memory and the clear preponderance of the affidavit-evidence.

Other Assignments of Error.

The vast number of other assignments of error are made in bulk, without any specification showing where the same may be found or any argument or authority respecting the claims made. We submit that they do not merit consideration at the hands of the court.

Conclusion.

The appellant must necessarily stand or fall upon the strength of his own equity and title. If he is not the owner, and entitled to the possession, of any part of the property in question, it is wholly immaterial as to what flaws or defects may exist in the title of the real owners.

The district judge has quite fully stated the facts and issues in his opinion, found on page 291 of the record, to which we refer the court.

The controlling proposition which answers and destroys all of the claims made by the appellant, is, that in an action brought by his grantor, John S. Bell, against George Staacke, and the estate of Thomas Bell, a final judgment and decree was rendered which was affirmed by the Supreme Court of California, and which conclusively established that George Staacke held the legal title to the 10,000 acres in trust, first to pay the indebtedness from John S. Bell to the estate of Thomas Bell. This judgment and decree is *res adjudicata* as against the plaintiff, and the sale of the property thereunder, and the confirmation thereof and the conveyance by the commissioner after failure to redeem, to Teresa Bell, left John S. Bell with nothing to sell and no title either in law or in equity which could be asserted by either John S. Bell or the appellant.

Respectfully submitted,

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Solicitors for Appellee, Union Oil Company of California.

United States Circuit Court
of Appeals,

For the Ninth Circuit.

U. S. OIL & LAND COMPANY, a corporation,
Appellant,

vs.

TERESA BELL as Administratrix of the Es-
tate of Thomas Bell, Deceased, with the
Will annexed, et al.,

Appellees.

APPELLANT'S REPLY BRIEF

RICHARDS & CARRIER,
JAMES L. CRITTENDEN,
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JACOB M. BLAKE,
Of Counsel.

Filed

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Clerk,

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Deputy.

F. D. Monckton,

Clerk.



United States Circuit Court of Appeals,

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APPELLANT'S REPLY BRIEF

Mr. Crittenden, one of the solicitors for complainant, availing himself of the courtesy and kindness of the Court, presents this reply brief in place of the closing oral argument which he was unable to make.

It appears conclusively from the bill and the issues raised by the answers of defendants that the case now before this court was never tried by or submitted to any court and could not have been submitted, or tried or decided in either *Bell v. Staacke* or *Bell v. San Francisco Savings Union*, for it presented in the court below and presents here the rights and interests acquired by the U. S. Oil and Land Company (appellant here) under, or resulting from, the decree in *Bell v.*

San Francisco Savings Union and acts done by the parties to that suit *subsequent* to the affirmance by the Supreme Court of the final decree therein contrary to the orders and provisions of said decree and in violation of the rights and interests of complainant, and also presents and involves the questions as to whether said decree in *Bell v. San Francisco Savings Union* was conclusive upon all rights of the parties to said suit irrespective of the pretended second decree in *Bell v. Staacke*, and whether all the rights claimed thereunder by Teresa Bell and the other defendants were waived and barred by failure to plead the pretended second decree in *Bell v. Staacke* in the later suit of *Bell v. San Francisco Savings Union* and by failure to apply by motion either for abatement of the said later suit or a stay of all proceedings therein.

The validity and finality of the *first* decree in *Bell v. Staacke*, the vested rights of the U. S. Oil and Land Company as purchaser of an undivided half of the 10,000 acre tract from its grantor in actual possession thereof on the 18th day of September 1902 while under the settled law of the state of California said first decree in *Bell v. Staacke* and the order denying a new trial were final and conclusive, and the conclusiveness of the decree in *Bell v. San Francisco Savings Union* and the right and interest of the U. S. Oil and Land Company in and to an undivided one-half of the 10,000 acre tract (conclusively established by the findings therein), and to one-half of any surplus proceeds arising from a sale thereof under said decree which must have been at least \$1,000,000, —are the material and important questions involved in this suit and on the appeal.

If said *first* decree in *Bell v. Staacke* and the order denying a new trial therein were final and conclusive, as we assert and maintain, then there was no other decree or order or valid proceeding therein and neither the superior court nor the Supreme Court of the state of California had any jurisdiction, power of authority

to change either said order or decree, or to grant any new trial or to set aside said order, or to retry said action, and the appellant is entitled to a reversal of the decree of the U. S. District Court and to a decree in its favor as prayed for by the bill.

If said first decree in *Bell v. Staacke* and the order therein denying a new trial were not final and conclusive the subsequent proceedings therein were unavailing and of no effect against the decree and findings in the later suit of *Kate M. Bell et al. v. San Francisco Savings Union et al.* as the U. S. Oil & Land Company was a party only to this later suit involving all parties in interest and all issues involved in *Bell v. Staacke*, and as all the rights, interests and claims of all the parties were tried, decided and adjudicated in said later suit.

Before discussing the main questions we desire to call the court's attention in the first place to the admission on page 8 of the brief for appellees Hammon and Van Deinse that "The statement of facts in the brief for appellant follows in the main the allegations of the bill" is a correct statement of the facts, decrees and findings alleged, and that there are no material issues of fact raised by any of the answers of defendants, and in the second place, to the following well settled rules and principles of law, which we beg the court to bear in mind in passing upon the main questions at issue and which, we believe, are decisive of the questions involved on this appeal, and will aid the court in arriving at a decision.

(1) An action is NOT tried until ALL the issues have been disposed of by findings of fact and conclusions of law on *all* the issues.

Bell v. Marsh, 80 Cal., 414;

Cases cited on pp. 29-30 and 35-41 of appellant's brief.

(2) There can be *but one decision* where the action is tried by the court whether it consists of one, two or more sets of findings of fact and conclusions of law.

Bell v. Marsh, *supra*.

Cases cited on pp. 29-30 and 35-41 of appellant's brief.

(3) There can be only one valid notice of intention to move for a new trial—a notice given *after* the *last* findings are filed.

Dorland v. Cunningham, 66 Cal., 485 (decision by McKinstry, Ross and McKee);

Cases cited on pp. 29-30 and 35-41 of appellant's brief.

(4) A notice of intention to move for a new trial given *before* the *last* findings are filed is premature—*can give to the court no power to act upon the motion—is ineffectual for any purpose*—gives to the court *NO JURISDICTION over the motion*—and must be denied.

Bates v. Gage, 49 Cal. 126;

Bell v. Marsh, 80 Cal., 411;

Reclamation Dist. No. 556 v. Thisby, 131 Cal., 574;

Harris v. Careaga, 1 W. C. Rep., 467;

Cases cited on pp. 29-30 and 35-41 of appellant's brief.

(5) The settled construction of section 659 of the Code of Civil Procedure of California from 1860 to December 28th, 1903 by the decision of the Supreme Court of California became and was in effect a part of the section or statute itself.

Douglas v. County of Pike, 101 U. S., 677, 686-687; (see note p. 668 as to reversal of other decisions on the same ground.)

Kuhn v. Fairmont Coal Co., 215 U. S., 349, 359-360, and cases cited in decision (decided Jan. 3, 1910.);

Estate of A. P. More, 143 Cal., 493, 495, 500;

Fairfield v. County of Gallatin, 100 U. S., 47;

Supervisors v. United States, 18 Wall., 71;

County of Ralls v. Douglas, 105 U. S., 731, 732;

Green County v. Conness, 109 U. S., 104;
Anderson v. Santa Ana, 116 U. S., 361;
German Savings Bk. v. Franklin County, 128
 U. S., 526, 539;
Loeb v. Trustees of Columbia Tnsp., 179 U. S.,
 492;
State v. Mayor of Bristol, 109 Tennessee, 323;
Barnitz v. Beverly, 163 U. S., 118;
Marshall v. Elgin, 8 Fed. Rep., 787;
Lepine v. Marrego, 116 La., 942; 41 Southern
 Rep., 217;
Pomeroy's Constitutional Law (7th Ed.) sec.
 592;
 Cases cited on pp. 30, 44-52 of appellant's
 brief.

The Supreme Court of the United States, in *Douglas v. County of Pike*, 101 U. S., 687, says:

"After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of the decision is to all intents and purposes the same in its effect on contracts as the amendment to the law by means of a legislative enactment."

The Supreme Court of the United States, in *Von Hoffmann v. City of Quincy*, 4 Wall., 535, says:

"It is also settled that the laws which subsisted at the time and place of the making of a contract, and where it is to be performed, ENTER INTO AND FORM A PART OF IT, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement. * * * The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against invasion. The obligation of a contract is the law which binds the parties to perform their agreement. The prohibition has no reference to the degree

of impairment; the largest and *the least* are alike forbidden."

Von Hoffman v. City of Quincy, 4 Wall., 535;
Edwards v. Kearzey, 96 U. S., 595;
Wolf v. New Orleans, 103 U. S., 358;
Robinson v. Magee, 9 Cal., 83;
People v. Bond, 10 Cal., 572, and cases cited;
Creighton v. Pragg, 21 Cal., 119;
Thorne v. San Francisco, 4 Cal., 131-138, and cases cited.

(The court, in an able review of the authorities, shows the injustice and great wrong of applying a new law or statute, or rule of law, to a contract where rights have vested under the law existing at the time of the making of the contract, and quotes Chase J., from 2 Dall. Rep., p. 386, *Calder Bull*, "that every law that takes away or impairs rights vested agreeably to existing laws, is retrospective and unjust, and that it is a general rule that a law shall have no retrospect." p. 135).

The Supreme Court of California, in bank, in *Bates v. Gregory* 89 Cal., , quotes with approbation the extract above quoted from *Von Hoffman v. City of Quincy*, 4 Wall., 535.

The Supreme Court of California, in *Ede v. Knight*, 93 Cal., 161, says:

"A valid contract cannot be abrogated by the adoption of a new Constitution, any more than it can be by the enactment of a law by the legislature," citing 2 How. (U. S.) 613; 1 Black, 436, and 3 Parsons on Contracts, sec. 555.

Angellotti, in *Estate of More*, *supra*, citing many decisions, said:

"The settled construction of a statute (Sec. C. C. P. as to time of giving notice of appeal) * * * is

in effect a part of the statute itself, and should not be changed by the courts."

Estate of More, 143 Cal., 495, 500.

(6) *A settled construction of a statute becomes as much a part of the statute as if it were a part of the text thereof so far as contract rights are concerned, and in a case involving those rights any subsequent decision in conflict with the former decisions construing the statute cannot affect contracts already made or any contract right accrued while the former decisions were in force.*

Authorities cited *supra* under (5).

(7) *The jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings.*

Williamson et al. v. Berry, 49 U. S. (8 How.) 495-10, 540-541.

(8) *If a court acts without authority its orders and judgments are nullities—not voidable but void—form no bar to a recovery sought—constitute no justification—and every person executing the same is considered in law a trespasser.*

Williamson et al. v. Berry, 49 U. S. (8 How.) 540;

Wilcox v. Jackson, 13 Pet., 499;

Shriver's Lessee v. Lynn et al., 2 How., 59;

Lessee of Hickey v. Stewart et al., 3 How., 750;

Christmas v. Russell, 5 Wall., 305;

Thompson v. Whitman, 18 Wall., 457;

McElmoyle v. Cohen, 13 Pet., 312;

Knowles v. Gas, Light & Coke Co., 19 Wall., 58;

D'Arcy v. Ketchum, 11 How., 165;

Webster v. Reed, 11 How., 437;

Harris v. Hardemann, 14 How., 334;

Kingsbury v. Ynestra, 59 Ala., 320.

(Held that a judgment reciting that defendant was served with process or appeared by attorney might be controverted and that it might be shown he was not served with process and was not in any manner brought into court and had not submitted himself to the jurisdiction or appeared by attorney or otherwise.)

(9) A party cannot avail himself of a former judgment as a defense without pleading it.

McLean v. Baldwin, 136 Cal., 565, 569;

Brown v. Campbell, 110 Cal. 645-650;

Cave v. Crafts, 53 Cal., 135;

Freeman on Judgments, sec. 322, and cases cited.

The Supreme Court of California, in *McLean v. Baldwin*, says:

“*It is well settled that a party cannot avail himself of a former judgment as a defense without pleading it.*”

McLean v. Baldwin, 136 Cal., 565, 569.

(10) A failure to plead a former judgment rendered in a prior action and to move for an abatement of the later action or a continuance of all proceedings therein until the former judgment has become final *operates as and is a waiver* of all rights and of every claim of estoppel under the former judgment, and the later judgment controls and is conclusive upon all parties to the action.

Brown v. Campbell, 110 Cal., 645-650;

Brown v. Campbell, 100 Cal., 635;

In re Blythe, 99 Cal., 472;

Simple v. Wright, 32 Cal., 659;

Cases cited in Appellant's Brief, pp. 33-34, 60-70.

(11) A trustee ordered and directed by a decree *to sell* in a certain manner and report sale subject to

confirmation cannot either sell in any other manner,—cannot sell without confirmation—cannot transfer or convey without selling,—and any sale, transfer or conveyance made contrray to the directions of the decree passes no title or interest and is *wrongful, illegal and ABSOLUTELY VOID.*

Bank of United States v. Ritchie et al., 8 Pet. (33 U. S.), 146;

Kenady v. Edwards, 134 U. S., 117 125;
Civil Code of California, sec. 870.

The Court, by Marshall, Ch J., in *Bank v. Ritchie, supra*, a case in which the trustee did just what the Mercantile Trust Company has done in the case at bar, says:

“The decree itself was disregarded by the trustee, in executing the conveyance. * * * The court has not intrusted to him the right of deciding on the debts *and disposing of the purchase money.* He is only to receive it before he conveys; and consequently should hold it subject to the order of the court. It does not appear, that he has ever received a cent. He undertakes to settle the account of Mr. Ritchie, the purchaser, and convey the property to him, in violation of the decree; on being satisfied by him that he had paid all the debts, and was himself a creditor to an amount exceeding the purchase money. He had no right to be satisfied of these facts. The court had not empowered him to inquire into or decide them. He has transcended his powers, and with the knowledge of the purchaser, and in combination with him, has executed to him a deed which the law did not authorize. *THE WHOLE PROCEEDING WAS IRREGULAR, AND OUGHT TO BE SET ASIDE.* The plaintiffs in the original suit will then be at liberty to prosecute their claims according to law.” (p. 146.)

The Supreme Court of the United States, in *Kenady v. Edwards*, 134 U. S. 117, 125, held that even *an order approving a trustee's sale made without notice to the parties to the suit was not valid.*

The finality of the decree in *Kate M. Bell et al. v. San Francisco Savings Union et al.* being admitted and confessed by the answers of defendants and their briefs, and it being further admitted by said answers and briefs that no sale of any of the property has ever been made under said decree and that the Mercantile Trust Company, trustee, has wholly failed to comply with any of the provisions of said decree in regard to the sale of said property and has executed a deed and conveyance purporting to grant, transfer and convey in fee simple absolute to Teresa Bell as administratrix etc. of the esstate of Thomas Bell, deceased, the 10,067.2 acre tract of land, and that said grant and conveyance has never been reported to or approved or confirmed by the Court rendering said decree, the validity of said transfer and conveyance by said trustee to one claiming to be a beneficiary though excluded by the decree from any right to receive any part of the proceeds of the sale of the property (which were to go to George Staacke after payment of the S. F. Savings Union) is the real or ultimate question or issue to be decided by this Court. Such a conveyance and transfer of the 10,000 acres without any sale or attempt to sell when the 10,000 acres was admittedly of the value of at least a million dollars and the indebtedness to be paid less than one-fifth of the value of the property was in its very nature an actual and positive fraud upon the U. S. Oil & Land Company, appellant here, for it conclusively appears in and by the findings of fact and adjudicated issues upon which said decree was made and entered that the U. S. Oil & Land Company did have an equity and an equitable right and interest in and to an undivided one-half of said 10,067.2-acre tract and in and to one-half of the surplus proceeds of the

sale thereof after payment of the indebtedness to the San Francisco Savings Union.

Bank of United States v. Ritchie et al. 8 Pet. (33 U. S.) 146.

The very same kind of a transfer and conveyance was made by a trustee without sale and was declared by the Court to be illegal, fraudulent and void in *Bank v. Ritchie*.

Kenady v. Edwards, 134, U. S. 117, 125.

The decree in this *later* suit of *Kate M. Bell et al. v. S. F. Savings Union et al.* from the time of its affirmation controlled and was conclusive not only as to the several relations, rights and interests of all the parties to it but as to the necessity of a sale, the mode and manner in which the sale should be made, the disposition of the proceeds, and the necessity of a report and confirmation of the sale before the execution of any transfer or conveyance of the property.

The unlawful, wrongful and fraudulent nature and character of such a transfer contrary to the clear and positive directions and commands of said final decree are too obvious to require argument upon a mere statement of the fact that the said 10,067.2-acre tract of land *was of the admitted value of at least One Million Dollars* (\$1,000,000) at the time of the pretended transfer and conveyance and of the alleged value of \$3,000,000 at the commencement of this suit, and of the fact that the U. S. Oil & Land Company, appellant here, had under said decree in *Bell v. San Francisco Savings Union* (the only suit to which it was a party) an interest of an undivided one-half in said 10,067.2-acre tract of land and in the surplus proceeds thereof remaining after a sale at public auction in accordance with said decree and the payment of the indebtedness to the San Francisco Savings Union amounting to about \$179,400.40 (Tr. p. 120.)

We here in this connection call the Court's attention to the following:

ADMITTED AND INDISPUTABLE FACTS

and beg that the Court will bear them in mind and apply them in determining the rights and interests of the U. S. Oil & Land Company, appellant, under the decree in *Bell v. San Francisco Savings Union et al.*

That John S. Bell was the owner in fee simple absolute of the 10,000-acre tract from the 19th day of October 1874 to the 27th day of August 1887, and also from October 19th 1874 until the 18th day of March 1885 was the owner of the 4,000-acre tract; that on March 18th 1885 said John S. Bell conveyed to Thomas Bell said 4,000-acre tract; that on August 23rd 1887 said John S. Bell sold said 10,000-acre tract and said Thomas Bell said 4,000-acre tract to Dwight W. Grover; that Grover failed to pay the part of the purchase price secured by notes and mortgages on said several tracts; that Grover and Rosener (to whom Grover had conveyed an interest) on February 23rd 1888 agreed "*to reconvey said two several tracts of land* (Findings 23 and 24, Tr. pp. 53-54); that said agreement *to reconvey* was accepted by John S. Bell and Thomas Bell, and on March 7th 1889, in pursuance of said agreement, said Grover and Rosener, *by grant* (recorded June 3rd 1889, Book 24 of Deeds, page 495, Santa Barbara County) *conveyed* at the request of said Thomas Bell and *with the knowledge, consent and acquiescence of said John S. Bell* both and each of said two several tracts of land to George Staake, who **PERSONALLY PAID NO CONSIDERATION THEREFOR** (Finding 24, Tr. p. 54); that said Staake was requested by Thomas Bell to receive and accept said conveyance of March 7th 1889 from Grover and Rosener "*with the intent and purpose on the part of both said Thomas Bell and said John S. Bell that said defendant George Staake should HOLD THE LEGAL TITLE* to the lands thereby conveyed for said Thomas Bell, "who should possess, manage administer and control the 4,000 acres as his own forever and also the

10,000 acres until the same should be sold, to the end and in order that from the rents, issues and profits to be collected and received by said Thomas Bell from said 10,000 acres and credited to John S. Bell and from the price for which the same should be sold all present and future indebtedness of John S. Bell to Thomas Bell as provided in the agreement (set forth in Finding 19, Tr. pp. 49-51) between them dated August 27th 1887 (Finding 25 Tr. pp. 55-56); *that on the 28th day of January 1892 said Thomas Bell quitclaimed said 4,000 acres to George Staake and on February 1st 1892 said Thomas Bell borrowen FOR THE BENEFIT OF SAID JOHN S. BELL from the San Francisco Savings Union \$60,000, credited the same to John S. Bell on his account as to the 10,000-acre tract and requested said Staake to make, execute and deliver to the San Francisco Savings Union his (Staake's) promissory note for \$60,000, and to make, execute and deliver to Henry C. Campbell and Thaddeus B. Kent a grant of said two tracts of land "as further security for the payment of said promissory note" of \$60,000 in addition to the guarantee of Thomas Bell in writing endorsed on said note agreeing to pay both principal and interest according to the terms thereof with waiver of demand, notice of non-payment, protest and notice of protest; that said conveyance by Staake to Campbell and Kent was acquiesced in by John S. Bell (Finding 29, Tr. pp. 58-59); hat said Staake, in pursuance of said request, on February 1st 1892 executed a grant of said two tracts of land as one tract of 13,200 acres to said Campbell and Kent, whereby he conveyed to said Campbell and Kent "in joint tenancy and to the survivor of them, their successors and assigns the piece or parcel of land" so granted by said Staake to Campbell and Kent, which piece included both of said tracts (describing said piece) (Finding 29, Tr. pp. 59-62); that said grant and conveyance by Staake to Campbell and Kent was upon certain trusts, among which was that upon default in payment of principal or interest and demand of said San Francisco Savings Union said Campbell and Kent might sell such*

parts of said lands as was necessary after publication of notice of time and place of sale for three weeks in a newspaper in San Francisco and also at their discretion in a newspaper in Santa Barbara county "*to the highest cash bidder* including, if such should be the case, he holder or holders of said promissory note" of \$60,000, and after certain payments mentioned to pay "LASTLY THE BALANCE OR SURPLUS OF SUCH PROCEEDS, IF ANY, TO SAID DEFENDANT GEORGE STAAKE, HIS HEIRS OR ASSIGNS" (Finding 29, Tr. pp. 62-63); that said John S. Bell with full knowledge of said grant and conveyance by Staaake to Campbell and Kent "and of the occasion, purpose and terms thereof and of the transaction" acquiesced therein and accepted the credit of the \$60,000 to his account (Finding 30, Tr. pp. 64); that said Staaake knew of the authority of Thomas Bell to act for said John S. Bell in said transaction of borrowing said \$60,000 and executing said conveyance to Campbell and Kent, before said grant was made, "BUT SAID DEFENDANT SAN FRANCISCO SAVINGS UNION HAD NOT NOR DID SAID HENRY C. CAMPBELL OR SAID DEFENDANT THADDEUS B. KENT HAVE ANY NOTICE AT SAID TIME OR UNTIL ABOUT FOUR YEARS THEREAFTER OF ANY INTEREST OF SAID JOHN S. BELL IN SAID PIECE OR PARCEL OF LAND DESCRIBED IN SAID GRANT NOR DID THEY OR ANY OF THEM HAVE NOTICE OR KNOWLEDGE OF ANY FACT OR CIRCUMSTANCE OF SUCH CHARACTER AS TO PUT THEM OR ANY OF THEM UPON INQUIRY OR TO REQUIRE THEM OR ANY OF THEM TO INQUIRE CONCERNING THE SAME" (Finding 31, Tr. pp. 64-65); that on the 22nd day of December 1896 by an instrument in writing recorded December 31 1896 in Book 59 of Deeds at page 33 said John S. Bell and George Staaake freely agreed with said San Francisco Savings Union that the security for the payment of said promissory note of \$60,000 "*created by said grant by said defendant George Staaake to said Henry C.*

*Campbell and said defendant Thaddeus B. Kent should be and remain a first charge on said piece or parcel of land in said grant described (on the entire 13,200 acres—both tracts). (Finding 34, Tr. pp. 66); that thereafter on December 22nd 1896 said John S. Bell conveyed both of said tracts to Kate M. Bell by grant deed recorded June 18th 1897 and thereafter Kate M. Bell and John S. Bell by grant deed dated June 12th 1897 and recorded June 18th 1897 conveyed an undivided one-half of both of said two tracts of land to James L. Crittenden and to Sidney M. van Wyck, Jr.; that thereafter by grant dated March 7th 1899 and recorded November 26th 1900 said Sidney M. van Wyck, Jr., conveyed to said James L. Crittenden all his right, title and interest to or in both of said two several tracts of land and thereafter said James L. Crittenden and Nina D. Crittenden, his wife, conveyed to the U. S. Oil & Land Company said undivided one-half of said two several tracts of land by grant deed dated the 18th day of September 1902 and recorded on the 26th day of September 1902 in Book 84 of Deeds at page 253, records of Santa Barbara county; that by certain conveyances under resolutions of the Board of directors of the San Francisco Savings Union the Mercantile Trust Company of San Francisco was vested “with all said title, interests, powers, duties and trusts * * * and ever since (Nov. 5th 1900) has been and now is the successor and assign of said grantees” (Finding 36, Tr. pp. 68-69); that the total amount due on said \$60,000-note was \$155,804.67 (Finding 37, Tr. pp. 69-70); “that it was never understood or agreed * * * said first above described of said two several tracts of land (the 10,000 acres) or any part thereof should be first sold” or that the 4,000-acre tract should not be sold unless there was a deficiency after the sale of the 10,000 acres (Finding 39, Tr. pp. 71); “that said action (*Bell v. Staacke*) so commenced on the 8th day of March 1893 * * * IS STILL PENDING in this court and is numbered 2826 * * * AND THE RELATIONS between said John S. Bell and his grantees of said first above described of said two several tracts of land (the 10,000 acres) on the one hand and said defendants George Staacke and Teresa Bell as adminis-*

tratrix of the estate of Thomas Bell, deceased, with the will annexed, on the other hand *in respect of said indebtedness of John S. Bell to said Thomas Bell* and in respect of said first above described of said two severaw tracts of land (the 10000 acres) and all or any parts there of ARE INVOLVED *in said action and constitute the subject-matter thereof and ARE IN COURSE OF judicial determination and settlement therein*" (Finding 40, Tr. pp. 71;—then, in its conclusions of law, finds and declares "*that this court HAVING BEEN VESTED BY THIS ACTION WITH JURISDICTION with respect to said TWO SEVERAL TRACTS OF LAND FOR THE PURPOSES OF DETERMINING THE ISSUES RAISED HEREIN by the complaint of said plaintiff and the answers thereto retain said jurisdiction FOR THE PURPOSE OF DOING COMPLETE JUSTICE AND DETERMINING COMPLETELY ALL CONTROVERSIES WITH RESPECT TO SAID TWO TRACTS OF LAND and for that purpose take under its direction and control the execution by said defendant Mercantile Trust Company of San Francisco of the trusts created by said grant * * * and direct, instruct and supervise said defendant Mercantile Trust Company of San Francisco in executing said trusts in accordance with this decision and ratify and confirm by its orders the execution thereof by said defendant Mercantile Trust Company of San Francisco in accordance with this decision to the end that the title of ANY PURCHASER of said two tracts of land or of either of them or any part thereof from said defendant Mercantile Trust Company of San Francisco may be quieted in this action against any and ALL claims of the parties hereto or any of them*" (Tr. pp.72-73); that said Teresa Bell as such administratrix is entitled to judgment that so much of said tract of 13,200 acres as does not include the 4,000-acre tract *be first sold* and the proceeds applied to the payment of the \$60,000-note and interest,"*but SAID DEFENDANT TERESA BELL AS ADMINIS-TRATRIX OF THE ESTATE OF THOMAS BELL,*

DECEASED, WITH THE WILL ANNEXED IS ENTITLED TO NO OTHER JUDGMENT HEREIN" (Tr. pp. 73); that said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, *GEORGE STAAKE* and Mercantile Trust Company of San Francisco are entitled to judgment herein "THAT SAID DEFENDANT TERESA BELL AS ADMINISTRATRIX OF THE ESTATE OF THOMAS BELL, DECEASED, WITH THE WILL ANNEXED *TAKE NOTHING BY THIS ACTION* EXCEPT AS HEREIN-AFTER ADJUDGED" (the sale of the 10,000 acres before a sale of 4,000 acres), and "that said plaintiffs Kate M. Bell and James L. Crittenden and *said defendant to cross-complaint U. S. Oil & Land Company* take nothing by this action."

The findings in *Bell v. San Francisco Savings Union et al.* above-mentioned were not made or filed until *March 14 1905* and that cause was not submitted until the 31st day of October 1904 (Tr. pp. 73, 72)—were not filed until four months and twenty days after the filing on October 26th 1904 of the decision, findings, etc on the so-called second trial of *Bell v. Staake* (Tr. pp. 231, Answer of Hammon and Van Deirse *were dated and signed* by the Judge of the Superior Court on the 17th day of October 1904.

The Superior Court on March 14th 1905 made and filed a judgment and decree in *Bell vs. San Francisco Savings Union* (Tr. p. 74-81) wherein "upon the pleadings and all the other papers heretofore filed and all the proceedings heretofore had in the above-entitled action and in particular upon the decision of this court this day given and filed herein." (Tr. p. 74) adjudged "that the above-named defendant *Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, TAKE NOTHING BY THIS ACTION* except as hereinafter adjudged" (Tr p. 74) and then adjudged nothing in her favor by said judgment and decree except that the 10,000-acre tract should be sold before a sale of the 4,000 acres (Tr. p. 79); also adjudged that after the sale of one or both of said tracts, as the

case might be, and the payment by the Mercantile Trust Company of San Francisco of the amount due on said note with interest "THE BALANCE OF SAID PROCEEDS, IF ANY," should be paid "TO SAID DEFENDANT GEORGE STAACKE, HIS HEIRS OR ASSIGNS" (Tr. p. 80); also adjudged "that the grant made, executed and delivered" by Staacke to Campbell and Kent dated February 1st 1892 was "A GOOD AN DVALID GRANT of the piece or parcel of land herein described (the 13,200 acres, both tracts) *upon the trusts therein mentioned*" (Tr. p. 75); also ordered and directed the specific manner in which said trusts should be executed by publication in certain named papers in Santa Barbara and San Francisco of a notice of time and place of sale "of the piece or parcel of land in said grant described" (the 13,200 acres, both tracts) and that the sale would be "*at public auction to the highest cash bidder in gold coin of the United States of the standard of 1892 in front of the County Court house in said City of Santa Barbara in two several tracts,*" stating the description thereof (Tr. p. 75); also adjudged that said sale be made at said time or at the time to which said sale might be postponed "pursuant to the terms of said notice . . . *and in either case* (the sale of one or both tracts) *thereupon to report its proceedings to this court* AND UPON CONFIRMATION OF SAID SALE OR SALES as the case may be BY ORDER OF THIS COURT TO BE ENTERED UPON SAID REPORT, to make and execute and, upon payment of the amounts bid for the same respectively, to deliver to the purchaser or purchasers, his or their heirs and assigns, a grant or grants of the said tract or tracts of land so sold as aforesaid" (Tr. p. 79).

It appears, and the Court will find by an examination of said purported decision and findings on the so-called second trial of *Bell v. Staacke* (Tr. p. 232-242) that every fact and issue of fact purported to be so found were tried and decided on the trial of *Bell v.*

San Francisco Savings Union and were and are included in the findings in that later case; also that it was there found in said purported decision of *Bell v. Staacke* “that on August 23d, 1887 plaintiff (John S. Bell) *was the owner* of the tract of land,” 10,000-acre tract (Tr. p. 232) and that (Tr. p. 236) George Staacke was under the trust upon which Grover and Rosner conveyed the 10,000-acre tract to him “to convey to the said John S. Bell the said tract of land (the 10,000 acres) or all that remained thereof after the payment of all sums” due to said Thomas Bell by said John S. Bell.

The findings and decree in the later suit of *Bell v. San Francisco Savings Union et al.* are, however, under the authorities cited above on page—8—conclusive, what ever may be the opinion of the Court as to the validity or invalidity of said purported second set of findings and judgment in *Bell v. Staacke* which, we say and think we have shown, were void and a mere nullity.

It appears as follows from the findings in *Bell v. San Francisco Savings Union*:

1. (Finding 29, Tr. p. 58): That “said Thomas Bell by instrument of quitclaim bearing date on the 28th day of January 1892 and recorded in the Recorder’s office in Book 33 of Deeds at page 54 on the third day of February 1892 quitclaimed” the 4,000-acre tract to George Staacke;

2. (Finding 29, Tr. p. 58): That said Thomas Bell on the 1st day of February 1892 “borrowed *for the benefit of said John S. Bell* from said defendant San Francisco Savings Union the sum of sixty thousand dollars and credited the same to said John S. Bell on account.”

3. (Finding 29, Tr. p. 59) That “as a *part of the same transaction* (the borrowing of the \$60,000) said Thomas Bell guaranteed in writing endorsed on said promissory note the payment of said principal sum

and interest according to the terms of said promissory note with waiver of demand, notice of payment, protest and notice of protest . . .

4. (Finding 29, Tr. p. 59) That "*as further security* (in addition to the guarantee) for the payment of said promissory note" the conveyance by Staacke was executed to Campbell and Kent of the entire tract of 13,000 or 14,000 acres, including both tracts of 10,000 and 4,000 acres, so-called;

5. (Finding 25, pp. 55-56). That the conveyance by Grover and Rosener to Staacke was made and received "with the intent and purpose on the part of both said Thomas Bell and said John S. Bell that said defendant George Staacke SHOULD HOLD THE LEGAL TITLE to the lands thereby conveyed FOR SAID THOMAS BELL, who should, possess, manage, administer and control the disposition of said second above described of said two several tracts of land (the 4,000 acres) AS HIS OWN FOREVER, and should also possess, manage, administer and control AS HIS OWN said first above described of said two several tracts of land (the 10,000 acres) with the exception aforesaid UNTIL THE SAME SHOULD BE SOLD to the end and in order that from the rents, issues and profits to be collected and received by said Thomas Bell . . . and credited to said John S. Bell and from the price for which the same should be sold all present and future indebtedness of said John S. Bell to said Thomas Bell should be repaid to said Thomas Bell in all respects as provided by said agreement between said Thomas Bell and John S. Bell so made and executed between them on the 27th day of day of August, 1887:"

6. (Finding 31, p. 65): That Campbell, Kent, and the San Francisco Savings Union had notice of the interest of John S. Bell in the tract of land (13,200 acres) "*about four years*" after the making of said deed—that is, about February 2nd 1896 and (Finding 34,

Tr. p. 66) thereafter on December 22nd 1896 by instrument in writing John S. Bell and George Staacke "*freely.....agreed with said defendant San Francisco Savings Union*" that the time for payment of said note should be extended until the 22nd day of December 1898 and that the security therefor created by said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent SHOULD BE AND REMAIN A FIRST CHARGE on said piece and parcel of land in said grant described" (that is, the whole 13,200 or 14,000 acres.)

I wish to call your attention to the above mentioned findings of fact which are conclusive upon every party to this suit as the conclusiveness and finality of the findings and decree in *Bell v. San Francisco Savings Union* are admitted by the answers of the defendants

If by written agreement signed by Staacke and by John S. Bell the grant to Campbell and Kent in trust was to "be and remain a first charge on" the 14,000 acres (*both tracts*), and if Staacke then had by and through the grant deed executed to him by Grover and Rosener and particularly by the quitclaim deed executed to him on the 28th of January 1892 by Thomas Bell the entire title, legal and equitable, of in and to the 4,000-acre tract, *then this written agreement of December 22nd 1896 bound the entire 14,000 acres*, shut Thomas Bell his heirs, executors and administrators out by transferring to Staacke and vesting in him all of Thomas Bell's rights and interest made every right, title and interest of John S. Bell in and to the 10,000-acre tract of John S. Bell and George Staacke, the then equitable owner of the 4,000 acre tract subject to the trust deed executed by Staacke to Campbell and Kent, and acknowledged and established an equity to the 10,067.2 acres in John S. Bell subject to the trust deed to Campbell and Kent.

We ask this Court's special attention to said above-mentioned Finding 34 in *Bell v. San Francisco Savings*

Union (Tr. p. 66-68) and to said written agreement found to have been entered into by John S. Bell, George Staacke and the San Francisco Savings Union on the 22nd day of December 1896 and recorded on the 31st day of December 1896 in Book 59 of Deeds at Page 33. The written agreement of December 22nd 1896 so recorded in said Book 59 on the 31st day of December 1896 was signed and executed under seal and also duly acknowledged by said San Francisco Savings Union, George Staacke individually, George Staacke, trustee, George Staacke and Jno. W. C. Maxwell, executors of the will of Thomas Bell, deceased, and by John S. Bell, and stated and declared

“This indenture, made this Twenty-second (22nd) day of December, 1896, between the San Francisco Savings Union, a Corporation, party of the first part, John S. Bell, party of the second part, George Staacke, in his own behalf and as Trustee in the premises for said John S. Bell and for the estate of Thomas Bell, deceased, and for the Executors of his will, and for Teresa Bell, widow, and Thomas Frederick Bell, Mary Teresa Bell, Robena Bell, Muriel Bell, Reginald Bell and Eustace Bell, children and heirs of said Thomas Bell, deceased, as their interests may appear, parties of the third part, and George Staacke and John W. C. Maxwell, Executors of the Will of said Thomas Bell, deceased, parties of the fourth part:

“Whereas, on the First (1st) day of February, 1892, *the said George Staacke, who then appeared and was by said party of the first part believed to be the owner in free in his own right of the lands described in the deed of trust hereinafter referred to*, borrowed from said party of the first part the sum of sixty thousand dollars (\$60,000.00) and executed and delivered to the party of the first part therefor his promissory note for said sum, of which the following is a true copy, to-wit: (then sets forth the note at length and the guarantee thereon signed by Thomas Bell).

“And whereas, to secure the payment of said note, said George Staacke executed and delivered to Henry C. Campbell and Thaddeus B. Kent, as parties of the second part, and said San Francisco Savings Union, as party of the third part his deed of trust of even date with said note, conveying certain lands situate in the County of Santa Barbara, State of California, for the description of which special reference is made to said deed of trust and to the record thereof, the same being of record in the office of the County Recorder of the County of Santa Barbara, State of California, in Liber 33 of Deeds, at pages 56 and following (then sets forth recitals of other matters).

“Now, therefore, in consideration of the premises and in pursuance of said judgment and decree, it is *mutually covenanted and agreed*. *that said deed of trust shall be and remain a FIRST charge on the lands therein described, to secure the payment of said note, PRIOR AND SUPERIOR TO ANY CLAIM, CHARGE OR LIEN THEREON IF THE PARTIES OF THE SECOND, THIRD AND FOURTH PARTS RESPECTIVELY, OR ANY OF THEM; . . .*

“In witness whereof, the party of the first part has caused this instrument to be executed by its President thereunto duly authorized, and its corporate seal to be affixed, and the parties of the second, third and fourth parts respectively have hereunto set their hands and seals, the day and year first above written.”

This remarkable agreement or indenture proves by its very terms and signatures that it was entered into and executed by every person and corporation then interested in any manner in said 14,000-acre tract of land or any part thereof, and its validity being distinctly found and declared in and by said finding it is conclusive upon all parties to it and upon the whole tract of 12,000 or 14,000 acres. It necessarily made John S. Bell and his rights and interests subject to said loan and to said trust deed executed to Campbell and Kent to secure the same, and made the San Fran-

cisco Savings Union and Campbell and Kent and every party to said agreement and indenture not only a necessary but indispensable party to any suit affecting said entire 13,000-acre tract of land or any part of it, for it declared "*that said deed of trust (to Campbell and Kent shall be and remain a first charge on the lands therein described, to secure the payment of said note, PRIOR AND SUPERIOR TO ANY CLAIM, CHARGE OR LIEN THEREON OF THE PARTIES OF THE SECOND, THIRD AND FOURTH PARTS RESPECTIVELY, OR ANY OF THEM.*"

The writer of this brief, Mr. Crittenden, when the existence of this indenture or agreement was first disclosed to him in June 1897; on the trial of *Bell v. Staacke*, a few days after he first appeared in that suit urged upon the Court and subsequently moved that the San Francisco Savings Union, Campbell and Kent, trustees, and all parties to said agreement or indenture were *indispensable* parties in the action of *Bell v. Staacke* and should be brought in by order of the Court as parties defendant, as their rights and interests were involved and no final decree as to any part of the land could be made without their being male parties. The defendant's attorneys opposed the motion and prevailed upon the Court to deny it.

A copy of said indenture or agreement dated the twenty-second day of December 1896 was introduced in evidence by the plaintiffs represented by Mr. Crittenden on the trial of the action of *Kate M. Bell et al v. San Francisco Savings Union et al.*, and will be found on pages 635-643 of the Transcript on Appeal. This indenture of December 22nd 1896 by its very terms was executed by George Staacke "*in his own behalf AND AS TRUSTEE IN THE PREMISES FOR SAID JOHN S. BELL,*" and was therefore an admission and declaration by all parties to it that John S. Bell had an interest in the tract of land described in the trust deed to Campbell and Kent, also that George Staacke was trustee for John S. Bell of some equity or trust of

which John S. Bell was a beneficiary, also that George Staacke was acting in part "in his own behalf" as an individual and doubtless under the quitclaim deed executed to him by Thomas Bell conveying the 4,000-acre tract of land.

If said quitclaim deed of Thomas Bell to Staacke passed and transferred anything to Staacke, it must have transferred all legal and equitable right, title, interest and claim of every kind and character of Thomas Bell to George Staacke, and neither the decree in *Bell v. San Francisco Savings Union* nor the findings therein show that Thomas Bell ever thereafter acquired any interest in or to the 4,000-acre tract or any part thereof, and, therefore, there never could have been any right on the part of the administratrix to pay the amount due and take a deed of any of the 14,000 acres, for that right, if it existed in anyone, must have been in George Staacke and George Staacke must by and under the deed from Grover and Rosener and under said quitclaim conveyance from Thomas Bell have succeeded not only to the legal title but to the equitable right or claim to hold the 10,000 acres, manage, administer and control the same and to pay off any indebtedness due Thomas Bell, that is, George Staacke individually and John S. Bell's successor in interest, U. S. Oil & Land Company, were the only persons that held the right to pay off the indebtedness due the San Francisco Savings Union, if such right existed after the decree was entered in *Bell v. San Francisco Savings Union*. Again, under the written agreement made by Staacke and John S. Bell with the San Francisco Savings Union on the 22nd day of December 1896 both Staacke and the San Francisco Savings Union bound *the entire 14,000 acres and gave John S. Bell an equity by acknowledging at that time an equitable right and interest in him and making the entire 14,000 acres and the trust in Campbell and Kent subject to his equity*, and thereby made the San Francisco Savings Union and its trustees *indispensable parties to*

any suit affecting the 14,000 acres or John S. Bell's interest therein, *indispensable* parties to ~~any~~ suit of Bell v. Staacke.

The legal title to the entire 13,000 or 14,000-acre tract was, according to the finding of the Court, transferred and conveyed to Staacke by Grover and Rosener with the consent of both Thomas Bell and John S. Bell to be held by Staacke in trust for John S. Bell and Thomas Bell as beneficiaries. George Staacke, according to said indenture of December 22nd 1896 and the finding of the Court, borrowed \$60,000 from the San Francisco Savings Union and as absolute owner in fee of said 14,000-acre tract granted and conveyed the same to Campbell and Kent in trust as security for the payment of the \$60,000, concealing from them and the San Francisco Savings Union the fact that he was not the owner in fee in his own right of said tract and also concealing the trust upon which he had received the same, thereby inducing said Campbell and Kent and the San Francisco Savings Union to believe that he was the absolute owner in fee in his own right of said land, then, four years afterwards, the San Francisco Savings Union and Campbell and Kent, according to the findings of the Court, discover that they have been imposed upon and deceived and exact or obtain from all the parties interested in the property this indenture or agreement of December 2nd 1896. Surely as bona fide and innocent mortgages of the entire tract the absolute title, legal and equitable, to said 14,000 acres passed to and was vested in said Campbell and Kent as trustees for the San Francisco Savings Union, free and clear of every legal, equitable or beneficial interest in or to any part of the same on the part of Thomas Bell and John S. Bell, especially as the Court finds that before the loan was made Thomas Bell conveyed by quitclaim the 4,000 acres to Staacke and that the money was borrowed by Staacke as owner in fee of the entire 14,000-acre tract and was borrowed for the benefit of John S. Bell and credited to his account with

Thomas Bell. No equity or beneficial interest of either Thomas or John S. Bell to any of the 14,000-acre tract could arise until after a reconveyance by Campbell and Kent to Staacke or a sale and the payment of the surplus proceeds to Staacke, and then only because equity would again enforce the original trust upon which it had been conveyed to Staacke by the deed of March 7th 1889. No sale of the 14,000-acre tract or any part of it could be made after said indenture of December 22 1896 was executed, except by the trustees of the San Francisco Savings Union, for they held the entire legal title in fee simple in trust for the San Francisco Savings Union as sole beneficiary of the trust upon which it was conveyed to them.

It clearly appears by the briefs of appellees and by the record and the decision (tr. pp. 291-6) of the District judge that the *sole and only question or issue heard by the district court was the sufficiency of certain alleged judgments of the state courts pleaded by the answers of certain defendants as a defense to the Bill*—a defense in the nature of a plea in bar,—that said issue or special defense was to “be separately heard and disposed of *before the trial of the principal case*” (p. 291)—that the sufficiency of the Bill, its equities and merits were not tried, heard or submitted to the court for decision,—that the court had already overruled all demurrers to the Bill (pp. 174-6), and denied motions of defendants for judgment on the pleadings (p. 226),—had held (p. 175) that ‘complainant had no adequate remedy at law in the courts of the United States,’ that complainant had not been guilty of laches, and its claim of title and equity were not stale or barred by the Statute of Limitations, and that the Bill was sufficient on its face to entitle the complainant to equitable relief.

It further appears by the record that the district court in deciding the *special defense* has attempted to decide and dispose of all facts, matters and equities alleged in the Bill without any trial or hearing thereof

and without any opportunity to complainant to be heard or offer evidence or try any of the issues raised by its bill, although it was distinctly and clearly understood as stated by it in its decision that said *special defense* was to "be *separately* heard and disposed of *before the TRIAL of the PRINCIPAL case.*" (p. 291),—that the solicitors for defendant's, or, Mr. Goodrich with the consent of the others, (Goodrich's Affidavit p. 316) prepared a decree in favor of defendants in which was inserted and embodied a recital of a stipulation and admission by complainant obviously so worded and designed as to prejudice and impair or defeat the rights of complainant on any appeal taken by it and so unfair and untrue in fact that the court, after refusal of defendant's solicitors to consent thereto, on motion of complainant ordered said recital corrected and said decree modified.

The correction of said recital by the court proves its unfairness, and the refusal of the solicitors of defendants to consent to any correction or modification illustrates the real purpose, intent and design of said solicitors in preparing and inserting such recital in the decree and in not submitting it to any of the complainants solicitors or counsel.

The solicitors for defendants carefully omitted from said recital (doubtless with the same purity of intent) any statement of the stipulation and admission made by *them* in open court on said hearing quoted from his and Mr. Crosby's brief by Mr. Blakeman in his affidavit (p. 306) to-wit: "*It was stipulated by the respective counsel herein in open court preceding the oral argument that the findings and judgment in Bell v. Staacke of June 29, 1901, and the findings and judgment in Bell v. San Francisco Savings Union, were substantially correct as set forth in the Bill of Complaint, and that the subsequent proceedings in that action and in Bell v. San Francisco Savings Union WERE SUBSTANTIALLY CORRECT as set forth in the answers of defendants.*"

The Judge, on the hearing of the motion to correct

the recital in the decree, stated that *the solicitors for defendants had joined* in the stipulation referred to in the decree and that he would have that fact stated in the order he would make in correcting the recital. Yet he never did it— Why? Did the defendant's solicitors again devise and form the modification of said recital? Are conscience and truth so far removed from the courts of equity that they no longer insist upon verity in their records?

Still more illustrative of the fairness and the purity of intent and purpose of said recital is the remarkable sworn statement (p. 318) of Mr. Goodrich:

“That the said decree *is clear and unambiguous; that the same does not, expressly, impliedly, necessarily or at all adjudge that the complainant stipulated to the validity of the said judgments or acts*, but declares that the complainant stipulated, as was the fact, that the said judgments were rendered and the said acts performed; that any modification of the decree as suggested by complaint would render the same ineffective for any purpose and would result in the travesty of justice; *that if there were any possible ambiguity in the said decree and if there were any disposition, or any attempt made, by any person, to claim that the decree recited a stipulation on the complainant's part to the validity of the said judgments and acts*, the whole record in the cause, including the opinion of the court, the briefs of counsel, **AND THIS AFFIDAVIT**, would show conclusively and without shadow of doubt that the complainant never admitted the validity of the said judgments or acts and that the whole question repeatedly and at length argued before the court in this cause was the very question of the validity of such judgments and acts.”

The solicitors for complainant have deemed it their duty to prefer a correction of the decree to the modest suggestion made by Mr. Goodrich in his affidavit (p. 318) that complainant leave to *his affidavit* and the Record any doubt or future difference as to the meaning or effect of said recital. It seems that he or his associate solicitors or some other person, reason or matter un-

disclosed and unknown to complainant or to its solicitors or counsel, prevented the judge from making the correction in said recital which he stated on the hearing he would make. We must so assume or assume that a new light was shed by some one upon the matter *after* argument and submission. What light or by whom we know not, but the solicitor who argued said motion for complainant, Mr. Crittenden, cannot after more than forty years practice in the Federal Courts consent to remain silent when his client's rights and interests have been so treated and jeopardized. The controverted stipulation (whatever its terms) was made, as stated by the judge on the hearing, *by the solicitors of all the parties before the court* and not solely by the solicitors for complainant. The very nature of the matter shows this, for it would be absurd for complainant to admit or stipulate as to the correctness of findings and judgments set forth at length in its verified bill, as the court would only accept proof or an admission from defendants as to the correctness thereof. Why was the correction not made so that the recital would state the truth and the verity of the decree and record be placed beyond doubt.

We trust that we may be pardoned a little skepticism as to the truthfulness of the affidavit of a solicitor who so audaciously and recklessly *swears* (p. 318) as to the only possible meaning and construction of said recital,—whose affidavit conflicts with the statement made by Mr. Blakeman and Mr. Crosby in their brief on said motion written within six weeks after the hearing on said special defense (see Blakeman's affidavit tr. p. 306),—who states on oath as a fact (p. 311) that on the 11th day of November 1912 at the argument of the demurrers to the bill the complainant was represented by Mr. Crittenden and Mr. Carrier and “that in reply to the argument of the said T. Z. Blakeman *the said solicitors for complainant* then and there admitted the existence of the said judgments but contended and argued that the same could not be taken cognizance of”

etc., though Mr. Crittenden was not there, made no such admission, and was more than 450 miles from said court and hearing at that time (tr. p. 320) This fact is proved beyond the possibility of doubt by Mr. Crittenden's affidavit in reply (p. 320) which was not contradicted and was within the actual knowledge of Judge Rudkin. ?

The court (p. 323) as a result of said motion *did correct* in part said recital "*nunc pro tunc as of July 21, 1913,*" the date of the entry and recording of the decree (tr. p. 297), but later on the same day after the adjournment of court and in the absence of complainant's solicitors and counsel, Mr. Goodrich, for defendants alone being present, made another order (p. 324) "that the motion to modify said decree be, and the same is hereby denied, except as to the matters and things covered by *the amendment to said decree* this day signed and filed herein."

The decree *as modified* is therefore before this court and necessarily brings with it said order modifying it and the decision as to the motion upon which the modifying order was made. This is so, we submit, under the well settled rules, principles and practice of courts of chancery, where on appeal from a decree all matters and proceedings upon which it or any of its provisions or recitals are based are subject to review as fully as if they had transpired or had been in the appellate court. We know of no provisions of the United States Statutes or of any rule of this court requiring an appeal to be taken from any such order or requiring a bill of exceptions thereto, and respectfully submit that there is no such law or rule.

Again we ask why was said recital not corrected and said decree thereby modified so as to show the stipulation and admission made by the solicitors for defendants "*that the findings and judgment in Bell v. Staacke of June 29, 1901, and the findings and judgment in Bell v. San Francisco Savings Union were substantially correct* as set forth in the bill of complaint

(Blakeman's Affidavit tr. p. 306), and so as to show of record the reciprocal admission and stipulation for that made on the part of the complainant?

Was this omission designed to prevent complainant from obtaining a final decree on appeal in the event of its being held and decided on appeal that the first judgment in *Bell v. Staacke* dated June 29th 1901 was final, or decided on appeal that the findings and judgment in the later action of *Bell v. San Francisco Savings Union* in which all of the parties to *Bell v. Staacke* and everyone interested in the property, including the U. S. Oil & Land Company (appellant here) was made a party, and in which every fact, matter, issue, right, title and equity involved in the prior action of *Bell v. Staacke* (including *ALL THE RELATIONS BETWEEN JOHN S. BELL AND HIS GRANTEES ON THE ONE HAND AND GEORGE STAACKE AND TERESA BELL AS ADMINISTRATRIX, etc. ON THE OTHER HAND* in respect of the indebtedness of John S. Bell to Thomas Bell and in respect of both tracts of land and all parts thereof, findings 4 to 34 inclusive, and 39 in *Bell v. San Francisco Savings Union et al*) was LITIGATED AND DECIDED,—was conclusive and binding as to the rights, titles, interests and equities of all parties irrespective of and despite all proceedings or purported proceedings in *Bell v. Staacke* after said first judgment therein? If omitted with such a design or intent we say none of the defendants can avail themselves of the omission, for none of the defendants except those represented by Mr Blakeman and Mr. Crosby have denied or controverted by their answers the allegations of the bill as to said findings and judgments, and the defendants represented by Mr. Blakeman and Mr. Crosby are all bound by the stipulation made by their solicitors in open court as stated in Mr. Blakeman's affidavit on page 306, for conscience and equity in Courts of Chancery do not permit or tolerate the repudiation of or the slightest deviation from such an admission and stipulation in open court

especially when by it a reciprocal admission or stipulation has been obtained from the opposite party and has been acted upon.

All the court could do in *Bell v. Staacke* was to adjudge that a lien existed in favor of Tom Bell and the amount of the indebtedness—but it could not adjudge or order any sale, as the lien itself had passed by Staacke's deed to Campbell and Kent in trust to secure the bona fide loan made by the San Francisco Savings Union, it could not order, adjudge or decree a sale of the 10067.2 acres or of any part thereof, as the entire legal title thereof had passed to Campbell and Kent by the deed from Staacke and the equity of the San Francisco Savings Union was by the acts of both John and Thomas Bell made superior to and entitled to a priority over any and every right or equity of either and both of them, for John had in writing ratified Staacke's conveyance to Campbell and Kent and the \$60,000.00 loan, and Thomas had conveyed to Staacke by quitclaim all of the 4000 acre tract and had guaranteed the loan and its payment.

The suit of *Bell v. San Francisco Savings Union* is radically different in many matters from *Bell v. Staacke*, but involves and includes all issues in *Bell v. Staacke*.

The Supreme Court in *Kate M. Bell et al. v. San Francisco Savings Union et al.*, 153 Cal., 64, 66, in rendering its decision on the appeals from the orders denying both motions for a new trial, says:

“Prior to the conveyance to Campbell and Kent *the legal title to this property was vested in George Staacke*. Staacke claimed no beneficial interest whatever, *but was holding purely as a trustee*. (p. 66.) * * * The U. S. Oil and Land Company, claiming as a successor in interest to the plaintiff, James L. Crittenden, was brought in by amendment as an additional defendant to the cross-complaint. By the various

answers to the cross-complaint, the parties representing the John S. Bell interest *and the Thomas Bell interest RAISED SUBSTANTIALLY THE SAME ISSUES AS THOSE WHICH HAD BEEN RAISED BY THE PLEADINGS heretofore discussed*, and in addition it was pleaded that the note held by the San Francisco Savings Union was barred by the statute of limitations and that the right of the cross complainants to any affirmative relief was barred by limitation." (p. 67).

The court also held that it, the Supreme Court, had no jurisdiction of the appeals by reason of the failure to serve Staacke who had died with notices of the several appeals from the judgments and orders denying new trials, and says:

"The service of notice of appeal has a two-fold purpose—first, to give the appellate court jurisdiction of the person of the respondent, and second, *to give the appellate court jurisdiction of the subject matter of the appeal*. Jurisdiction of the person may be conferred by a voluntary appearance at any time, *but inasmuch as jurisdiction of the subject-matter can never be conferred by consent*, the voluntary appearance by the respondent must be made within the time in which a service of notice upon such respondent would be effectual to vest jurisdiction of the appeal in the appellate court. (p. 70-71.)

The court in its decision, referring to the motions for a new trial under section 659 of the code of civil procedure says:

"In so far as the proceeding for a new trial is a "new statutory proceeding, collateral" to the main action, (Fowden v. Pacific Coast S. S. Co., 149 Cal. 151, 86 Pac. 178,) the parties to such collateral proceeding are determined by the notice, *and the jurisdiction of the parties, other than the moving party, is obtained by the service upon them of such notice.*" (p. 69)

Sloss, J., in his opinion, after stating that the Supreme court had no jurisdiction, makes an inaccurate and incorrect reference on page 74 to a finding (finding No. 40) of the lower court in the record of which the court held it had no jurisdiction, whatever over the subject-matter of that suit or over any of the parties thereto.

The court clearly held that it had no jurisdiction either of the appeal from the judgment or the order denying a new trial, but purported to modify the decree in so far as to the amount allowed as interest on the note on the ground that such modification was not injurious to and could not affect George Staacke—affirmed the order denying both motions for a new trial and denied the motion to dismiss the appeals from said orders.

The decision in *Casey v. Jordan*, 68 Cal. 246, cited on page 74 of the decision, is not in point and does not sustain the statement that “the finding as to the pending action (which is not attacked) clearly made it the duty of the court to reserve for adjudication in that action (*Bell v. Staacke*) the matters herein involved.” (p. 74.

In *Casey v. Jordan*, 68 Cal., 246, cited on page 74 of the decision, is not in point and does not sustain the statement that “the finding as to the pending action (which is not attacked) clearly made it the duty of the Court to reserve for adjudication in that action (*Bell v. Staacke*) the matters therein involved.” (pp. 74.)

In *Casey v. Jordan*, 68 Cal., 246, two days after a void order of dismissal of a former action between the same parties identical with the later action (*Heinlin v. Castro*, 22 Cal., 102) the later action was commenced and judgment was rendered therein in favor of the defendants. Judgment in the former action was also rendered. The Court held “It should only have have adjudged that the action

abate" instead of giving judgment in favor of defendants and directed such modification of the judgment. Decided in Department 1 by Ross, Justice, McKee and McKinstry, Justices, concurring.

The Court in *Bell v. S. F. S. Union*, pp. 72, says: "But, while the court may review the action of the lower court in figuring interest on the sixty-thousand-dollar note, we think the judgment and order appealed from cannot be reversed, nor can it be modified in any other particular without detriment to the interests of Staacke or his estate." It decided to retain for that purpose only the appeals from the orders and the judgment. (pp. 71-72.)

The learned solicitors for Hammon and Van Deinse (defendants who claim to be the purchasers for value and admit notice and knowledge of all the records and of facts and matters which put them upon diligent inquiry and gave them notice of all that could have been discovered by such inquiry (Tr. pp. 288-261, 288) are mistaken in making the statement on pages 25-26 of their brief that the Supreme Court of the State in *Bell v. Staacke*, 137 Cal., 307, on September 16th 1902 by its decision changed the well settled rule that a notice of intention to move for a new trial was premature and ineffectual for any purpose or to confer jurisdiction if served or filed before the last findings of fact and conclusions of law were made and filed, and also mistaken in asserting on page 26 that the U. S. Oil & Land Company's purchase of said land was "at least two days after" a change of said settled rule of construction of the statute. Their statements are so misleading that we deem it our duty to call the Court's attention to them and to the fact that the Supreme Court of the State in the very language quoted by counsel on pages 25-26 intimates that the settled rule would not be departed from by stating "A FAILURE TO SERVE SUCH A NOTICE AT ALL MIGHT BE A GOOD REASON FOR DE-

changed or purported to change the
settled rule of construction of
said section 659,

all records of the company to be
maintained in the office
of the company.

NYING THE MOTION," and then merely holds, as it had uniformly held, that a party's right to appeal from such an order was not thereby defeated and that it did not constitute a reason for dismissal upon the ground that the Court had no jurisdiction *to hear* such an appeal. The Supreme Court of the State never until November 3rd 1903 when it attempted to reverse the order denying a new trial after the same had been affirmed and after the judgment had been affirmed.

The same learned solicitors are mistaken in their statement of the effect of the decision in *Cross Lake Club v. Louisiana*, 224 U. S., 662.

The decision of the Court in *Cross Lake Club v. Louisiana*, 224 U. S., 632, did *not* involve and does *not* decide the question as to the settled construction of a statute and contract made long after such settled construction had become in effect a part of the statute itself. On the contrary, the construction of the statute under question and involved in that suit had been uniform and as given and applied in the suit. A statute of 1892 and the question whether by its terms it conveyed certain lands were the only issues in the case. The later statute of 1902 that should have been objected to was not questioned or made an issue in the *nisi prius* court or in the Supreme Court of the State, and the Supreme Court of the United States says:

"Under the construction given to the Act of 1892 the state still held the title, no conveyance having been made to the Board of the Levee District, and of course the right to maintain the suit was appurtenant to the title. What has been said sufficiently demonstrates that no effect whatever was given to th Act of 1902, and therefore, that the case presents no question under the contract laws of the Constitution; and as there is no suggestion of the presence of any other Federal puestion, the writ of error is dismissed."

It is obvious, therefore, that the only question in the United States Supreme Court was that of jurisdiction, and also that there was no question involving the settled construction of a statute or that the decisions of the state courts were not in accordance with that settled construction; and, therefore, the construction of the statute by the state courts could not have impaired the obligation of the contract involved, as the decision was in accordance with the settled construction and also in accordance with the Act or statute of 1892. The language italicized on pages 28-29 of the brief for appellees Hammon and Van Deinze is utterly inapplicable to the question now before this Court. The Courts of the United States had no jurisdiction in the case because there was no Federal question, no settled construction of a statute involved, no subsequent law or statute impairing the obligation of a contract, and no decision of the Court in conflict with the law as settled by a long line of decisions; but if the Court had had jurisdiction, as in the case at bar, it would have and must have decided any question involving the impairment of the obligation of the contract. The Supreme Court does not cite review or purport to overrule any of its former decisions cited by this appellant.

There is no question here as to the jurisdiction of this Court over the subject-matter and the parties, or as to jurisdiction being conferred by impairment of contract. The law as to impairment of contract obligation to be applied here by this Court is, under the Constitution and laws of the State of California, as well as under the laws and Constitution of the United States. The Constitution declares (Article I, Section 16, State Constitution):

“ . . . no *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.”

And the Supreme Court of this State has held for more than half a century (1) that the uniform construction of a statute by decisions of the Supreme Court becomes in effect a part of the statute itself and

any contract made while such construction of the statute is in force is valid and cannot be defeated either by any subsequent statute or any subsequent decision of the Supreme Court or any other court placing a different construction on the statute.

The same learned counsel are mistaken in urging upon this Court that the U. S. Oil & Land Company had permitted a final judgment against it to remain of record without questioning its validity (pp. 62-63 of their brief) and immediately thereafter (on page 63) call the Court's attention to the commencement of two suits, one in 1910 and one 1911, in the Superior Court of Santa Barbara County in each of which the judgments against it were disputed and put in issue and relief was sought against them, substantially as is sought in this suit. These solicitors leaped outside of the record in calling attention to these suits, as the complaints therein were not introduced in evidence and no admission was made as to them. If they had been disposed to be fair in the matter and had not intended to attempt to mislead or prejudice this Court by referring to said suits and the voluntary dismissal thereof by the U. S. Oil & Land Company, plaintiff therein, they would have stated the reasons why said dismissals were made by the U. S. Oil & Land Company, namely, that certain defendants, those represented by Mr. Blakeman and Mr. Crosby, appeared in each suit within a few days after the commencement thereof and prevailed upon the Court to set the same for trial before other defendants, who were material and necessary parties, could be served with summons and complaint, and the plaintiff and Mr. Crittenden, one of its attorneys, became satisfied that it could not have a fair and impartial trial in that court and also that it would be put to great expense in separate trials against different defendants. It was also hoped and expected at the time of the dismissal of each of those suits that the commencement thereof and the *lis pendens* recorded in each suit would put such speculators as Hammon and

Van Deinse upon notice as to the rights and interest of the U. S. Oil & Land Company and as to its determination to deny and assail the jurisdiction of the Courts in said suit of Bell v. Staacke after the first judgment therein, and to assert its title despite any such judgments in said suit of Bell v. Staacke and any claim of Teresa Bell as administratrix based upon the transfer and conveyance made to her by the Mercantile Trust Company, or based upon any pretended sale under any such judgment in Bell v. Staacke. There were other reasons that influenced Mr. Crittenden in dismissing said suits, which he deems it unnecessary to present here as they might wound the feelings of persons who are not parties to this suit and can, in his judgment, have little or no bearing or effect upon the decision of this suit or any matter in it, but if the court deems they may have he is ready and willing to disclose them. These two suits commenced in 1910 and 1911, with the *lis pendens* filed in each, gave clear and positive notice of the assertion of title by the U. S. Oil and Land Company, also of its denial of any effect upon its title resulting from any such judgments in Bell v. Staacke, and refute unqualifiedly the statement of said appellees' solicitors.

The same solicitors do not hesitate to broadly and deliberately misstate the position and contention in this suit of the solicitors and counsel for appellant by stating (p. 63 of their brief) "The theories they now advance have been held and advanced by them for twenty years" and supplement it by adding untruthfully the statement that "Those theories, as well as the appellant, have had their day in court," for it is almost incredible that attorneys who have been so long engaged in the practice of law and one of whom has adorned the state superior bench could have read the Bill in this suit without discovering and knowing that the issues presented by it and now before this court have never been submitted to, tried or decided in any court and that the so-called "theories"—meaning, doubtless, the great principles of equity jurisprudence laid

down in the numerous decisions of the Supreme Court of the United States cited by us—could not have been advanced by Mr. Crittenden or either of the counsel in this case for twenty years in any part of the litigation. We readily admit that all of the solicitors and counsel for appellant have for more than twenty years understood and relied upon the great principles of jurisprudence cited by them, knowing them to have been declared and sustained by the most eminent jurists of the United States and of Great Britain.

These same solicitors finally (pp. 64-67 of their brief) urge the judgments in *Bell v. Staacke* and *Bell v. San Francisco Savings Union* as *res adjudicata* or a bar to appellant's recovery, and modestly suggest that they have put a cart of sixty-three pages before their horse of *res adjudicata* of three pages, and cite decisions in cases so radically different that they have, we submit, no bearing upon the questions here presented. The facts and issues in said cases being radically different the language quoted is inapplicable to the case now before this court. No court has ever yet held, we submit, that *res adjudicata* could arise or be based upon a judgment or order made by a court without jurisdiction or where a trustee in violation of the positive commands and provisions of a decree has transferred or attempted to transfer by conveyance to one beneficiary or pretended beneficiary of a trust the rights, interest or equity of another beneficiary of the trust. Chief Justice Marshall, in the case of *Bank of the United States v. Ritchie et al.*, in an opinion unanimously concurred in by all of the justices of the Supreme Court of the United States, which we have above cited and quoted from, settled this question several generations ago, and that decision has never been questioned, but has always been recognized and followed as a settled principle by the Supreme Court of the United States.

The contention on the part of appellees that this suit ~~is~~ as a collateral attack upon the judgment in *Bell v. Staacke* is, we think, not seriously intended, for it is

not possible to imagine a more direct and positive attack than that made by the bill of complaint in this suit assailing the jurisdiction and authority of the court in all proceedings after the entry of the first judgment. That such an attack is direct and may be made needs no citation of authorities, and we merely refer the court to authorities cited above on page.....7..... and to

Williamson v. Berry, 49 U. S. (8 How.) 495, 540-541.

The contention of appellees that the judgment and decree in *Bell v. San Francisco Savings Union*, the later suit, does not conclude and prevail over the so-called second judgment in *Bell v. Staacke* is met by the fact that it appears clearly from record that said so-called second judgment in *Bell v. Staacke* was made on the 17th day of October 1904 and filed on October 26th 1904 (tr. p. 242), and the suit of *Bell v. San Francisco Savings Union* was not submitted to the court until the 31st day of October 1904 (tr. p. 42), and was not decided until March 14th 1905 (tr. p. 73) and judgment was entered on the same day (tr. p. 81)—also by the fact as stated by Mr. Blakeman, that the pendency of the suit of *Bell v. Staacke* was alleged in an amendment to her answer filed by Teresa Bell as administratrix—and by the fact that no motion or application was made to the court in *Bell v. San Francisco Savings Union* either to continue the trial of that later suit or to abate it, though the defendants had ample time to make such a motion or application—and by the further and conclusive fact that the court in the later suit of *Bell v. San Francisco Savings Union* by its third conclusion of law (tr. p. 72) passed upon the matter of the pendency of the suit of *Bell v. Staacke* by declaring “this court having been vested by this action with jurisdiction with respect to said two several tracts of land for the purposes of determining the issues raised herein by the complaint of said plaintiff and the answers thereto retain said jurisdiction for the

PURPOSE OF DOING COMPLETE JUSTICE AND DETERMINING COMPLTTELY ALL CONTROVER-
SIES WITH RESPECT TO SAID TWO TRACTS
OF LAND and for that purpose take under its direct-
ion and control the execution by said defendant Mer-
cantile Trust Company of San Francisco of the trusts
created by said grant so recorded in the office of said
Recorder of the County of Santa Barbara in the state
of California in Book 33 of deeds at page 56 as afore-
said * * * " (tr. p. 73).

By this solemn indenture of Dec. 22 1896 under seal
all parties interested not only ratified and confirmed the
original transaction by which Staacke granted and
conveyed to Campbell and Kent the 14,000 acres and
the absolute title in fee simple as owner thereof in
his own right (Civil Code, sec. 1105, 1104, 1106, 1107)
in trust as security for the payment of \$60,000 bor-
rowed by him from the San Francisco Savings Union
on his promissory note, and made the San Francisco
Savings Union the sole beneficiary of that trust, leav-
ing in Staacke only an equity as to any balance of the
proceeds resulting from any sale of the land after
payment of the indebtedness to the San Francisco
Savings Union. The position of the parties in interest
after the said transaction was consummated was iden-
tical with that stated in this indenture by reason of
the vesting of the absolute title to the property of
record in Staacke, if the San Francisco Savings Union
was an innocent and *bona fide* incumbrancer as found
by the Court, for Thomas Bell and John S. Bell were
responsible for the absolute conveyance by Grover
and Rosener to Staacke and thereby enabled Staacke
to consummate said transaction. But by said indenture
they expressly declared and made any and every equity,
right and claim on the part of any of them subsequent
and inferior to said deed of trust executed to Campbell
and Kent and made said trust deed and the beneficial
interest thereunder of the San Francisco Savings Union
"prior and superior to any claim, charge or lien there-
on of the parties of the second, third and fourth parts

respectively, or any of them." The equity of Staacke only was left to protect any rights, interests or claims of John S. Bell and Thomas Bell, the executors and heirs of Thomas Bell, George Staacke individually and as trustee for John S. Bell and as trustee for the heirs of Thomas Bell, and that equity was, by reason of the ratified transaction, an equity as to the entire tract of 14,000 acres. No sale of any part or portion of the tract of 14,000 could, therefore, be made without a judgment against the San Francisco Savings Union and the trustees under said trust created by said deed from Staacke to Campbell and Kent, and the pretended sale under the so-called second judgment in *Bell v. Staacke* was void and passed no title, right or equity.

The conception of the learned solicitors for appellees Hammon and Van Deinse as to the equitable doctrine requiring tender to be made in certain cases is (pp. 61-62) novel, for they admit (Tr. pp. 277) that 10,067.2 acres were of the value of \$500,000 when Teresa Bell paid the indebtedness due the San Francisco Savings Union under the trust deed executed to Campbell and Kent, amounting to \$179,411.40, and that the development of oil near said 10,067.2 acres made them prospectively worth at least one million dollars or more, and their clients have, if we are reliably informed, contracted to purchase about 2,000 acres out of said 10,067.2-acre tract of land for about \$1,200,000 and have paid to Teresa Bell as such administratrix and to heirs of Thomas Bell on account of said contract more than \$400,000. Said administratrix has also received large sums of money as rental from said 10,067.2-acre tract. She and the heirs of Thomas Bell have therefore received not only the amount paid to the San Francisco Savings Union and the amount adjudged in the first decree of *Bell v. Staacke* to be due from John S. Bell to Thomas Bell, but a large sum of money in addition thereto. It must have been obvious to these learned gentlemen and their clients that instead of there being any money due or required to

be tendered by the appellant here to Teresa Bell there was money due from Teresa Bell as such administratrix to the appellant. The equitable doctrine of tender is utterly inapplicable to the case now before this Court.

The limitation of time within which to serve and file a notice of intention to move for a new trial by section 659 of the Code of Civil Procedure was as absolute a limitation upon the jurisdiction of the court as any of the sections of the same code limiting the time of appeal, and it could not be extended by any construction of the court. It fixed the time at ten (10) days "after notice of the decision of the court," and by section 633 provides and declares that the "decision" shall state "the facts found and conclusions of law" and that the judgment upon the decision must be entered accordingly," and thereby makes all findings and conclusions of law of the court a part of the decision. It follows, therefore, that the decision in *Bell v. Staacke* on the first trial was not complete or filed until the seventh day of June 1901, when finally the court completed it as a basis for the judgment that was entered. The time to serve notice of intention under the section of the code cited could not be under the statute a different time from which each party was required to serve the notice. No court would pretend to hold or declare that the plaintiff's time to serve such notice did or could commence before the seventh day of June 1901. The time of the defendants to serve such notice unquestionably expired on the eighteenth day of June, 1901, for they served and filed a notice of appeal from the judgment and from the order denying a new trial on the eighth day of July 1901 (tr. p. 106), and said judgment recites (tr. p. 12) the making and filing of an amendment of the decision on June 7th 1901. Said appeal not only disclosed knowledge and notice of the amendment of the decision but was a distinct waiver of any notice of the decision. (9 Pac. Coast Law J., 765; 97 Cal., 15.) Where one has actual knowledge of a de-

cision, formal notice is not necessary. (77 Cal., 527-529; 116 Cal., 139; 95 Cal., 251; 95 Cal., 368; 99 Cal., 178; 69 Cal., 559; 90 Cal., 562.)

Mr. Blakeman and Mr. Crosby in their brief have paid little or no regard to the record as made by the Transcript on Appeal and have given a somewhat colored statement as to pleadings not before the lower or this Court and not contained in the record. This transgression on their part will be so obvious to this Court when it has read the transcript that we deem it unnecessary to point out the many instances in which they have disregarded the boundaries of the record in this case. They even refer to the original complaint in *Bell v. Staacke* which ceased to have any vitality whatever in the case in which it was filed and was radically amended upon motion and order after elaborate argument so as to conform to the truth and the facts as disclosed to Mr. Crittenden at the time of the trial of said case of *Bell v. Staacke*. All of this digression from the record has a coloring which marks it as intended to influence and prejudice the minds of the Justices of this Court. Had they been actuated by an intent to be fair and not to mislead the Court, they might have truthfully stated to the Court the following facts, to-wit: that Judge Day, one of the most honorable judges that ever presided on the bench, after a full trial of that case, found and decided every fact and issue as to the trust and in fact every issue, except as to the indebtedness of John S. Bell individually to Thomas Bell, in favor of the plaintiff in that suit and in accordance with the allegations of the amended complaint; that Judge Day could not have decided otherwise without utterly ignoring and disregarding the uncontroverted testimony of Rosener, George Staacke, John S. Bell, Mrs. Kate M. Bell and Mr. Hathaway and a letter of Thomas Bell stating an agreement in writing made by Grover and Rosener with him and John S. Bell as to the conveyance of said tracts of land back to himself and John S. Bell;

that the appeal taken from Judge Day's judgment was dismissed on the ground of a want of jurisdiction to hear it; that the order denying a new trial was affirmed by the Supreme Court and after its affirmance a rehearing was granted by *two* of the justices at the instance of the chief justice who joined them in granting the rehearing upon a petition that was never served upon the attorneys for the respondent on that appeal; that on the rehearing the Court not only usurped a power and jurisdiction which it had repeatedly held unanimously in bank it did not have, but also, utterly disregarding the constitution and laws of this state and innumerable decisions attempted to reverse the order denying a new trial on the ground that a material finding of fact supported by the testimony of those five witnesses and said written agreement and many letters of Thomas Bell was unsupported by the evidence—a decision upon which we forbear to comment only because we deem the appropriate language to such a high-handed attempt to defeat and deny justice might be considered by this Court out of place in this brief; that on the so-called re-trial of said action of *Bell v. Staacke* and on every proceeding thereafter and on appeal the plaintiff in said suit objected to the jurisdiction of the Court; that on said so-called re-trial Grover appeared as a witness and testified substantially the same as Rosener and that other evidence was presented by plaintiff including all the evidence and testimony on the first trial, and the new judge, Taggart, in deciding the case stated that the additional testimony and evidence was only corroborative and cumulative evidence and that he saw no reason to differ from the Supreme Court as to the findings of fact, virtually making the Supreme Court the judge as to the facts and the trial a mockery and a farce.

Messrs. Blakeman and Crosby however show by their statements (pp. 18-29) that the parties represented by them in *Bell v. San Francisco Savings Union* plead-

ed therein every fact, matter and issue raised and involved by the pleadings in *Bell v. Staacke*—that the San Francisco Savings Union, Campbell, Kent, George Staacke and the Mercantile Trust Company, defendants in *Bell v. San Francisco Savings Union*, filed a cross-complaint “against the plaintiffs and against Teresa Bell as administratrix of the estate of Thomas Bell, deceased, and against the defendant to cross-complaint, U. S. Oil and Land Company,” and in their said cross-complaint “alleged that on the 8th day of March, 1893, John S. Bell commenced an action against the defendant, George Staacke, and against the executors at the time of the will of Thomas Bell wherein he claimed to be the owner in equity of said tract of land of 10,000 acres and demanded judgment that Staacke convey the same to John S. Bell (meaning said action of *Bell v. Staacke et al.*)” (pp. 25) that said indenture of December 22nd 1896 was duly made and recorded (pp 26)—that in and by said cross-complaint the San Francisco Savings Union, Campbell, Pond, Kent, George Staacke and the Mercantile Trust Company demanded “that this Court, *having been vested by this action with jurisdiction with respect to the said tracts of land* for the purpose of determining the issues raised herein by the complaint and answers thereto, **RETAIN SAID JURISDICTION FOR THE PURPOSE OF DOING COMPLETE JUSTICE AND DETERMINING COMPLETELY ALL CONTROVERSIES WITH RESPECT TO SAID TWO TRACTS OF LAND, AND FOR THAT PURPOSE TAKE UNDER ITS DIRECTION AND CONTROL THE EXECUTION BY DEFENDANT, MERCANTILE TRUST COMPANY OF THE TRUST CREATED BY THE SAID DEED OF TRUST.**” (pp. 25)—the facts set out in said cross-complaint (pp. 25-27)—that on June 13th 1904 before the trial of *Bell v. San Francisco Savings Union* Teresa Bell as such administratrix filed a further amended answer to the complaint of the plaintiff alleging the pendency of the action of *Bell v. Staacke* and asking “that this action *Bell v. San Francisco*

Savings Union) as between the plaintiff and herself, in so far as concerns the trust upon which the defendant George Staacke holds the land described in Paragraph I of the complaint herein, abate or ~~to~~ be continued until the final determination of said action No. 2826" (pp. 27-28) ~~and~~ that the trial proceeded upon ALL OF THE ISSUES MADE BY THE PLEADINGS NOTWITHSTANDING THE LAST AMENDMENT AFORESAID TO THE ANSWER OF THE DEFENDANT TERESA BELL AS ADMINISTRATRIXand that "the Court. made its findings and decision in favor of the San Francisco Savings Union and the Mercantile Trust Company ON THEIR CROSS-COMPLAINT, except that it was found that the defendant Teresa Bell as administratrix was entitled to have the 10,000 acre tract offered for sale first by the trustee Mercantile Trust Company" (pp. 28-29), (The Court found (Tr. pp. 71) that it was never so understood or agreed between the San Francisco Savings Union and George Staacke).

We hereby call the Court's attention to the fact that the Court decreed that said administratrix take proceeds after paying the San Francisco Savings Union nothing under its decision and decree—that all surplus be paid to "George Staacke, his heirs and assigns" and declared in its conclusions of law that it retained jurisdiction of said action for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land." (Tr. pp. 72).

Neither Teresa Bell nor any other party to the suit of *Bell v. San Francisco Savings Union* ever subsequent to the trial thereof applied to the Supreme Court for a continuance of the hearing of the appeals taken from the judgment and order denying a new trial therein until that court had passed upon the appeal taken in *Bell v. Staacke*, though they could have done so under the decisions of the supreme court above cited and

though they knew from those decisions that a failure to do so was a waiver of any claim of bar or estoppel under or by reason of any judgment in *Bell v. Staacke*, and that judgment and decree in the later suit of *Bell v. San Francisco Savings Union* would by such failure and waiver become final and conclusive over every matter adjudicated in or by any judgment in *Bell v. Staacke*.

In a discussion of the doctrine laid down in *Gelpoke v. Dubuque* and *Burgers v. Seligman* in appellant's opening brief at pages 51 and 52, we omit to cite the case there referred to, which is *Kuhn v. Fairmont Coal Company*, 215 U. S. 349, 54 L. ed. 228.

In this case the certificate of the Circuit Court of Appeals sent up the following question to be answered by the Supreme Court of the United States:

"Is this Court bound by the decision of the supreme court in the case of *Griffin v. Fairmont Coal Co.*, that for damages for a tort, based on facts and circumstances almost identical, the language of the deeds with reference to the granting clause being in fact identical, that case having been decided *after* the contract upon which defendant relies was executed, *after* the injury complained of was sustained, and *after* this action was instituted?"

After stating that the scope of the decision in the *Griffin* Case covers the case before the court and reviewing the principles involved, it says:

"We take it, then, *that it is no longer to be questioned* that the Federal courts, in determining cases before them, are to be guided by the following rules: 1. When administering state laws and determining rights accruing under those laws, the jurisdiction of the Federal court is an independent one, not subordinate to, but co-ordinate and concurrent with, the

jurisdiction of the state courts. 2. Where *before the rights of the parties accrued*, certain rules relating to real estates have been so established by state decisions as to become rules of property and action in the state, those rules are accepted by the Federal court as authoritative declarations of the law of the state. 3. *But where the law of the state has not been thus settled*, it is not only the right, but the duty of the Federal court to exercise its own judgment, as it also always does when the case before it depends upon the doctrines of commercial law and general jurisprudence. 4. So, *when contracts and transactions are entered into the rights have accrued under a particular state of the local decisions, or when there has been no decision by the state court on the particular question involved, then the Federal courts properly claim the right to give effect to their own judgment as to what is the law of the state applicable to the case, even where a different view has been expressed by the state court after the rights of the parties accrued.*

“The court took care, in *Burges v. Seligman*, to say that *the Federal court would not only fail in its duty, but defeat the object for which the national courts were given jurisdiction of controversies between citizens of different states*, if while leaning to agreement with the state court, it did not exercise an independent judgment in cases involving principles not settled by previous adjudications.”

The court then proceeds to distinguish certain other cases which would seem to overrule the decisions of *Gelpeke v. Dubuque* and *Burgess v. Seligman*, as follows:

“It has been suggested—and the suggestion cannot be passed without notice—that the views

we have expressed herein are not in harmony with some recent utterances of this court, and we are referred to *East Central Eureka Min. Co. v. Central Eureka Min. Co.* 204 U. S. 266, 272, 51 L. ed. 476, 481, 27 Sup. Ct. Rep. 258. That case involved, among other questions, the meaning of a deed for mining property. This court, in its opinion, referred to a decision of the state court as to the real object of the deed, and expressed its concurrence with the views of that court. That was quite sufficient to dispose of the case. But in the opinion it was further said: 'The construction and effect of a conveyance between private parties is a matter as to which we follow the court of the state'—citing *Brine v. Hartford F. Ins. Co.* 96 U. S. 627, 636, 24 L. ed. 858, 861; *De Vaughn v. Hutchinson*, 165 U. S. 566, 41 L. ed. 827, 17 Sup. Ct. Rep. 461. Even if the broad language just quoted seems to give some support to the contention of the defendant, it is to be observed that no reference is made in the opinion of the numerous cases, some of which are above cited, *holding that the Federal court is not bound, in cases between citizens of different states, to follow the state decision, if it was rendered after the date of the transaction out of which the rights of the parties arose. Certainly there was no purpose on the part of the court to overrule or to modify the doctrines of those cases; and the broad language quoted from East Central Eureka Min. Co. v. Central Eureka Min. Co. must therefore be interpreted in the light of the particular cases cited to support the view which that language imports.*'

On several occasions efforts have been made to lead the Supreme Court of the United States to apply the doctrine laid down in *Gelpeke v. Dubuque* to the construction of articles of the Constitution like that pro-

hibiting a state from passing a law impairing the obligation of contracts and which are express limitations upon the state legislature, with the object of bringing the decisions of state courts before it for review upon the ground that a Federal Question is involved; but the court has uniformly held that the same questions passed upon in the principal cases cannot be raised upon a writ of error to a state court. Such a case is that of *Cross Lake Shooting & F. Club v. Louisiana*, 224 U. S. 632, 638, cited at page 29 of the brief of Appellees Hammon and Van Deinse.

Such another case is the one cited by Mr. Goodrich on the oral argument, viz. *Ross v. Oregon*, 220 U. S. 150, 163. This was a writ of error to the state court and the Supreme Court was asked to hold that the action of the state court in judicially construing a state statute as making criminal certain acts done since its enactment, over the objection that to put such a construction upon the law violated the prohibition of the United States Constitution upon states against passing ex post facto laws, and the court held that no Federal question was presented which would sustain a writ of error to the State Court, since the constitutional provision was a restraint upon legislative, and not judicial action. In this connection the court says:

“The plaintiff in error cites the cases” among others “of *Muhlker v. New York v. H. R. Co.* 197 U. S. 544, 49 L. ed. 872 . . . *Gelpeke v. Dubucke*: . . . “as holding that a judicial decision may be a law in the sense of the constitutional provision which he invokes. But none of those cases, when rightly considered, sustains that position.”

The court from the beginning of this line of decision in *Gelpeke v. Dubuque* and *Burgess v. Seligman* has carefully, conscientiously and persistently exercised its right to disregard the latest decision of a court of a state overruling the settled decisions of the state

at the time the contract was entered into, or refusing to follow a late decision, when there was no settled, or any rule of decision of state court, at the time the contract was made, where to do so would impair the obligation of the contract, only in cases ^{coming} ~~owing~~ before it by writ of ~~error~~ or appeal from inferior Federal Courts where the jurisdiction attaches upon the ground of diverse citizenship. Here they are free to, and do, give expression to a rule of equity and justice, which they cannot recognize when construing constitutional provisions expressly restricting the legislative action of State Courts. This is what renders the case at bar a perfect type and one exactly in line with the reasoning of *Burgess v. Seligman*.

Campbell and Kent as such bona-fide and innocent grantees and trustees of the entire tract of 14,000 acres, the Mercantile Trust Company as their successor and grantee, and the San Francisco Savings Union as a bona-fide and innocent incumbrancer and beneficiary of said grant and conveyance to Campbell and Kent and of the trusts therein and thereby created, had the absolute right—and also under said indenture or agreement of December 22nd 1896 had the absolute and infeasible right to demand and did demand of and from the court in and by a cross-complaint against all parties and all successors in interest of Staacke, of Thomas Bell and of John S. Bell, in *Bell v. San Francisco Savings Union* (Blakeman and Crosby brief p. 25) “that this court, having been vested by this action with jurisdiction with respect to the said ~~two~~ ^{several} ~~said~~ tracts of land * * * * retain said jurisdiction for the purpose of doing *complete justice and determining completely all controversies* with respect to said TWO tracts of land” etc. This demand was made after Campbell, Kent, and the San Francisco Savings Union had threatened to sell the 4,000 acre tract (B & C. brief p. 24) after Teresa Bell as such administratrix and George Staacke had by an amended answer in *Bell v. San Francisco Savings Union* “set forth substan-

tially the same matters that were pleaded in the cross-complaint of the defendants in the action of Bell against Staacke'' (see B. & C. brief p. 21); that is, all of the relations between all of the parties and especially those between John S. Bell and Thomas Bell and both of the Bells and Staacke and all of the issues of fact and law involved and raised by the pleadings in Bell v. Staacke, thereby voluntarily and affirmatively seeking a decision upon all of the said issues and relations of the parties in said later suit of Bell v. San Francisco Savings Union and necessarily waiving and abandoning any claim for the continuance or abatement of said later suit; and after the San Francisco Savings Union, Campbell, Kent, Pond, George Staacke and the Mercantile Trust Company had by their said cross-complaint (B. & C. brief pp. 25-26) coupled with their said demand an allegation as to the pendency of said suit of Bell v. Staacke and the claims and issues involved therein. Mr. Blakeman and Mr. Crosby, in their statement of the pleadings in Bell v. San Francisco Savings Union, shrewdly omit to state that the complaint in that suit alleged all the relations between the parties as fully as was alleged in the complaint in Bell v. Staacke.

Teresa Bell as such administratrix could not both seek a decision in Bell v. San Francisco Savings Union of every issue involved in Bell v. Staacke and at the same time ask the court to continue or abate the suit, nor could she ask the Supreme Court upon such pleadings either to continue or abate said suit or to continue the hearing of the appeals therein until they had decided the appeals in Bell v. Staacke. It was the positive and absolute duty of the court upon the issues raised by the pleadings to take jurisdiction of both tracts of land and to decide in Bell v. San Francisco Savings Union every issue raised by the pleadings, every controversy between the parties, and every relation between each and all of the parties to the suit, for they were presented by the pleadings and any failure to find upon each and all of said issues and matters and to adjudicate the same

would not only have been an utter disregard for and violation of its duty but it would have caused a mistrial or failure to try the suit.

The court performed its duty, complied with the demands made upon it, above stated, found upon every issue and matter, and adjudged that it would administer in the suit of *Bell v. San Francisco Savings Union* 'complete justice and determine completely all controversies with respect to said TWO tracts of land' and would 'for that purpose take under its direction and control the execution by defendant Mercantile Trust Company of the trust created by said deed of trust executed to Campbell and Kent.' We say that the decree in *Bell v. San Francisco Savings Union*, construed in the light of the pleadings therein, in accordance with the indenture of December 22nd 1896 and the conduct of the parties in the suit, said demand made by the Mercantile Trust Company and its co-plaintiffs in the cross-complaint, and the findings of fact and conclusions of law, can only mean that the court did assume full jurisdiction over all controversies between any and all of the parties, including all relations of the parties and all matters and facts stated in its findings, and did adjudicate completely all such controversies, issues and relations of every kind and character.

We can but attribute to ignorance of equity pleading, ignorance of the principles of equity jurisprudence, an excess of zeal for their client's interests resulting from a large cash or expected fee, or an utter disregard of the truth, the statement made by Messrs. Slack and Goodrich on pages 61-62 of their brief as to the Bill of Complaint in this suit—to-wit, "Its iniquity is apparent. The appellant endeavored to obtain by its pleading the benefit of the vacated judgment in *Bell v. Staacke* by a baldfaced and intentional suppression of the fact that six subsequent judgments, in the trial and in the appellate courts, vacated that decree and directed results wholly different." It is hardly credible that attorneys of such experience did not know where a court or

courts are without jurisdiction any and every judgment rendered by them is absolutely null and void and assailable not only directly but collaterally. We assert, and we believe we have shown that the so-called judgments and decisions in *Bell v. Staacke* in the Superior and supreme courts were absolutely void for want of jurisdiction, and the supreme court itself, in *Bell v. San Francisco Savings Union*, declared that it did not and could not have any jurisdiction of those appeals and its attempted modification of the amount adjudged or fixed by the judgment of the lower court was utterly void, and all its statements are mere dicta and entitled to no weight or consideration. We say further that the superior court had no jurisdiction, power or authority to grant the writ of assistance in *Bell v. Staacke* against Kate M. Bell and the Supreme Court had no jurisdiction, power or authority to affirm that writ or the proceeding thereon, but neither the U. S. Oil and Land Company nor its grantors were served with any notice of said proceeding or made a party thereto or had any opportunity to be heard thereon, and cannot be bound thereby. We thus dispose of the so-called "six subsequent judgments" so courteously mentioned in the Slack-Goodrich brief and which were so earnestly and persistently urged by them upon the judge of the District Court and were so magnified in their importance to him as to control and subjugate his mind and cause him to overlook or disregard the merits of the Bill, the great principles of equity jurisprudence and the decisions of the Supreme Court of the United States cited by complainant's solicitors and counsel.

It is respectfully submitted that the judgment of dismissal should be reversed and set aside and that the complainant (appellant here) is entitled to a decree upon the pleadings as prayed for in the Bill and to an order of this court directing the making and entry of such decree in and by the District Court.

Serious and continued illness has prevented my writing this brief as fully and connectedly as I desired

and intended and from arranging it in points or subdivisions, and I am compelled to respectfully submit it with an apology to the court for its many imperfections and deficiencies.

December 6th 1914.

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